



PLANNING COMMITTEE

DATE:	Tuesday, 19 November 2019
TIME:	6.00 pm
VENUE:	Council Chamber - Council Offices, Thorpe Road, Weeley, CO16 9AJ

MEMBERSHIP:

Councillor White (Chairman)
Councillor Bray (Vice-Chairman)
Councillor Alexander
Councillor Cawthron
Councillor Codling

Councillor Fowler
Councillor Harris
Councillor McWilliams
Councillor Placey

Most Council meetings are open to the public and press.

Agendas and Minutes are published on the Council's website www.tendringdc.gov.uk. Agendas are available to view five working days prior to the meeting date and the Council aims to publish Minutes within five working days of the meeting.

Meeting papers can be provided, on request, in large print, in Braille, or on disc, tape, or in other languages.

For further details and general enquiries about this meeting, contact Katie Sullivan on 01255 686585.

DATE OF PUBLICATION: MONDAY 11 NOVEMBER 2019

AGENDA

1 Apologies for Absence and Substitutions

The Committee is asked to note any apologies for absence and substitutions received from Members.

2 Minutes of the Last Meeting (Pages 1 - 8)

To confirm and sign as a correct record, the minutes of the meeting of the Committee, held on Tuesday 22 October 2019.

3 Declarations of Interest

Councillors are invited to declare any Disclosable Pecuniary Interests or Personal Interest, and the nature of it, in relation to any item on the agenda.

4 Questions on Notice pursuant to Council Procedure Rule 38

Subject to providing two working days' notice, a Member of the Committee may ask the Chairman of the Committee a question on any matter in relation to which the Council has powers or duties which affect the Tendring District **and** which falls within the terms of reference of the Committee.

5 A.1 - Planning Application - 19/00738/FUL - Land rear of 1 & 2 The Paddocks, Windmill Road, Bradfield, CO11 2QR (Pages 9 - 24)

Erection of 5no. detached bungalows.

6 A.2 - Planning Application - 18/00767/OUT - Land to the North of Stourview Close, Mistley, CO11 1LT (Pages 25 - 82)

Proposed new access road and the erection of up to 72 dwellings and associated works.

MEETING OVERRUN DATE

In the event that all business is not concluded, the meeting will reconvene on **Monday 25 November 2019 at 6.00 p.m.** in the Council Chamber, Council Offices, Thorpe Road, Weeley to consider any remaining agenda items

Date of the Next Scheduled Meeting

The next scheduled meeting of the Planning Committee is to be held in the Council Offices, Thorpe Road, Weeley, CO16 9AJ at 6.00 pm on Tuesday, 17 December 2019.

Information for Visitors

PUBLIC ATTENDANCE AT PLANNING COMMITTEE MEETINGS

Welcome to this evening's meeting of Tendring District Council's Planning Committee. This is an open meeting which members of the public can attend to see Councillors debating and transacting the business of the Council. However, please be aware that, unless you have registered to speak under the Public Speaking Scheme, members of the public are not entitled to make any comment or take part in the meeting. You are also asked to behave in a respectful manner at all times during these meetings.

Members of the public do have the right to film or record Committee meetings subject to the provisions set out below:-

Rights of members of the public to film and record meetings

Under The Openness of Local Government Bodies Regulations 2014, any person is permitted to film or record any meeting of the Council, a Committee, Sub-Committee or the Cabinet, unless the public have been excluded from the meeting for the consideration of exempt or confidential business.

Members of the public also have the right to report meetings using social media (including blogging or tweeting). The Council will provide reasonable facilities to facilitate reporting.

Public Behaviour

Any person exercising the rights set out above must not disrupt proceedings. Examples of what will be regarded as disruptive, include, but are not limited to:

- (1) Moving outside the area designated for the public;
- (2) Making excessive noise;
- (3) Intrusive lighting/flash; or
- (4) Asking a Councillor to repeat a statement.

In addition, members of the public or the public gallery should **not** be filmed as this could infringe on an individual's right to privacy, if their prior permission has not been obtained.

Any person considered being disruptive or filming the public will be requested to cease doing so by the Chairman of the meeting and may be asked to leave the meeting. A refusal by the member of the public concerned will lead to the Police being called to intervene.

FIRE EVACUATION PROCEDURE

There is no alarm test scheduled for this meeting.

In the event of an alarm sounding, please calmly make your way out of any of the fire exits in the hall and follow the exit signs out of the building.

Please heed the instructions given by any member of staff and they will assist you in leaving the building and direct you to the assembly point.

Please do not re-enter the building until you are advised it is safe to do so by the relevant member of staff.

Your calmness and assistance is greatly appreciated.

Tendring District Council



PLANNING COMMITTEE MEETINGS PUBLIC SPEAKING SCHEME May 2017

This Public Speaking Scheme is made pursuant to Council Procedure Rule 38 and gives the opportunity for a member of the public and other parties identified below to speak to Tendring District Council's Planning Committee when they are deciding a planning application.

TO WHICH MEETINGS DOES THIS SCHEME APPLY?

Usually any public meeting of the Council's Planning Committee, which are normally held every 4 weeks in the Council Chamber at the Council Offices, Thorpe Road, Weeley CO16 9AJ beginning at 6.00 pm. In some instances, the Planning Committee may be held at the Town Hall, Station Road, Clacton-on-Sea CO15 1SE and the public are encouraged to check the venue on the Council's Website before attending.

WHO CAN SPEAK & TIME PERMITTED? All speakers must be aged 18 or over:

1. One member of the public who wishes to comment on or to speak in favour of the application or someone who produces a signed, written authority to speak on their behalf. A maximum of 3 minutes is allowed;
2. One member of the public who wishes to comment on or speak against the application or someone who produces a signed, written authority to speak on their behalf. A maximum of 3 minutes is allowed;
3. Where the proposed development is in the area of a Parish or Town Council, one Parish or Town Council representative. A maximum of 3 minutes is allowed;
4. All District Councillors for the ward where the development is situated ("ward member") or (if the ward member is unable to attend the meeting) a District Councillor appointed in writing by the ward member. Member(s) of adjacent wards or wards impacted by the proposed development may also speak with the agreement of the Chairman. Permission for District Councillors to speak is subject to the Council's Code of Conduct and the declarations of interest provisions will apply. A maximum of 5 minutes is allowed;
5. In accordance, with Council Procedure Rule 34.1, this Public Speaking Scheme takes precedence and no other Member shall be entitled to address or speak to the Planning Committee under Rule 34.1;
6. The applicant, his agent or representative; or (where applicable) one person the subject of the potential enforcement action or directly affected by the potential confirmation of a tree preservation order, his agent or representative. A maximum of 3 minutes is allowed; and

7. A member of the Council's Cabinet may also be permitted to speak on any application but only if the proposed development has a direct impact on the portfolio for which the Cabinet member is responsible. The Leader of the Council must approve the Cabinet Member making representations to the Planning Committee. A maximum of 3 minutes is allowed.

Any one speaking as a Parish/Town Council representative maybe requested to produce written evidence of their authority to do so, by the District Council's Committee Services Officer (CSO). This evidence may be an official Minute, copy of standing orders (or equivalent) or a signed letter from the Clerk to the Parish/Town Council and must be shown to the DSO before the beginning of the Planning Committee meeting concerned.

No speaker, (with the exception of Ward Members, who are limited to 5 minutes) may speak for more than 3 minutes on any agenda items associated with applications (such as a planning application and an associated listed building consent application). Speakers may not be questioned at the meeting, nor can any public speaker question other speakers, Councillors or Officers. Speakers are not permitted to introduce any photograph, drawing or written material, including slide or other presentations, as part of their public speaking.

All Committee meetings of Tendring District Council are chaired by the Chairman or Vice-Chairman (in their absence) whose responsibility is to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community. The Chairman of the Planning Committee therefore, has authority to use their discretion when applying the Public Speaking Scheme to comply with this duty.

WHICH MATTERS ARE COVERED BY THIS SCHEME?

Applications for planning permission, reserved matters approval, listed building consent, conservation area consent, advertisement consent, hazardous substances consent, proposed or potential enforcement action and the proposed or potential confirmation of any tree preservation order, where these are the subject of public reports to the Planning Committee meeting.

HOW CAN I FIND OUT WHEN A MATTER WILL BE CONSIDERED?

In addition to the publication of agendas with written reports, the dates and times of the Planning Committee meetings are shown on the Council's website. It should be noted that some applications may be withdrawn by the applicant at short notice and others may be deferred because of new information or for procedural reasons. This means that deferral takes place shortly before or during the Planning Committee meeting and you will not be able to speak at that meeting, but will be able to do so at the meeting when the application is next considered by the Planning Committee.

DO I HAVE TO ATTEND THE PLANNING COMMITTEE MEETING TO MAKE THE COMMITTEE AWARE OF MY VIEWS?

No. If you have made written representations, their substance will be taken into account and the Committee report, which is available to all Planning Committee Councillors, will contain a summary of the representations received.

HOW DO I ARRANGE TO SPEAK AT THE MEETING?

You can:-

Telephone the Committee Services Officer ("CSO") (01255 686585) during normal working hours on any weekday after the reports and agenda have been published,

OR

On the day of the Planning Committee meeting, you can arrive in the Council Chamber at least 15 minutes before the beginning of the meeting (meetings normally begin at 6.00pm) and speak to the DSO.

If more than one person wants to speak who is eligible under a particular category (e.g. a member of the public within the description set out in numbered paragraph 1 above), the right to speak under that category will be on a “first come, first served” basis.

Indicating to the Chairman at a site visit that you wish to speak on an item is NOT formal notification or registration to speak; this must be made via the Committee Services Officer in the manner set out above.

WHAT WILL HAPPEN WHEN THE MATTER CONCERNED IS CONSIDERED?

- Planning Officer presents officer report
- Public speaking takes place in the order set out above under the heading “WHO CAN SPEAK?”
- Officer(s) may respond on factual issues arising from public speaking and may sum up the key policies and material planning considerations relevant to the application
- Committee Members may ask Officers relevant questions and may move, debate and vote

Normally, the Committee then determines the matter, but sometimes the Councillors decide to defer determination, to allow officers to seek further information about a particular planning issue. If a matter is deferred after the public speaking, the Committee will not hear public speaking for a second time, unless there has been a substantial change in the application which requires representations to be made. The Executive Summary section of the Planning Committee Report will identify whether public speaking is going to be permitted on an application being reconsidered after deferral. If there is an update since the Report was published, the Council’s website will confirm this information.

WHAT SHOULD I SAY AT THE MEETING?

Please be straightforward and concise and try to keep your comments to planning matters which are directly relevant to the application or matter concerned. Planning matters may include things such as planning policy, previous decisions of the Council on the same site or in similar circumstances, design, appearance, layout, effects on amenity, overlooking, loss of light, overshadowing, loss of privacy, noise or smell nuisance, impact on trees, listed buildings or highway safety.

Matters such as the following are not relevant planning matters, namely the effect of the development on property value(s), loss of view, personality or motive of the applicant, covenants, private rights or easements and boundary or access disputes.

Please be courteous and do not make personal remarks. You may wish to come to the meeting with a written statement of exactly what you want to say or read out, having checked beforehand that it will not overrun the 3 minutes allowed.

WHO DO I CONTACT FOR MORE INFORMATION?

The Council's website will help you and you can also contact the relevant planning Case Officer for the matter. The name of the Officer is on the acknowledgement of the application or in the correspondence we have sent you.

Tendring District Council, Planning Services, Council Offices, Thorpe Road, Weeley,
CLACTON-ON-SEA, Essex CO16 9AJ Tel: 01255 686161 Fax: 01255 686417
Email: planningservices@tendringdc.gov.uk Web: www.tendringdc.gov.uk

It always helps to save time if you can quote the planning application reference number.

**Monitoring Officer
Tendring District Council
in consultation with Head of Planning and
Chairman of the Planning Committee
(Council Procedure Rule 38)
May 2017**

**MINUTES OF THE MEETING OF THE PLANNING COMMITTEE,
HELD ON TUESDAY 22 OCTOBER 2019 AT 6.00 PM IN THE COUNCIL CHAMBER,
COUNCIL OFFICES, THORPE ROAD, WEELEY, CO16 9AJ**

Present:	Councillors White (Chairman), Bray (Vice-Chairman), Alexander, Cawthron, Fowler, Harris and Placey
Also Present:	Councillors Scott, Stock OBE (except minutes 57 - 60) and Wiggins
In Attendance:	Cath Bicknell (Head of Planning), Lisa Hastings (Head of Governance and Legal Services & Monitoring Officer), Graham Nourse (Planning Manager), Trevor Faulkner (Temporary Planning Team Leader), Amy Lang (Planning Officer) and Katie Sullivan (Committee Services Officer)

52. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apologies for Absence were submitted on behalf of Councillors McWilliams and Codling (with no substitutes).

53. MINUTES OF THE LAST MEETING

The minutes of the last meeting of the Committee, held on Tuesday 24 September 2019, were approved as a correct record and signed by the Chairman.

54. DECLARATIONS OF INTEREST

Councillor Scott, who was present in the public gallery, declared for the public record in relation to Planning Applications 19/01261/FUL and 19/01353/OUT that he was a local Ward Member.

Councillor Wiggins, who was present in the public gallery, declared for the public record in relation to Planning Applications 19/01261/FUL and 19/01353/OUT that she was a local Ward Member.

Councillor Stock, who was present in the public gallery, declared for the public record in relation to Planning Application 19/01353/OUT that he had a registered Disclosable Pecuniary Interest against that property.

55. QUESTIONS ON NOTICE PURSUANT TO COUNCIL PROCEDURE RULE 38

Pursuant to the provisions of Council Procedure Rule 38 Councillor Placey asked the Chairman of the Committee (Councillor White) the following question:-

“Can I ask if the Council, using its Planning powers, can actually dictate the size of homes (i.e. number of bedrooms) they are looking for in relation to new building? I ask this because expensive large homes are not in the reach of many young people in the area, especially those caught up in private renting and large 3,4,5 beds are not sought after by the growing number of people choosing to live alone. In asking this question I do not see that homes with fewer bedrooms would adversely affect the number of homes built, rather it could increase it; and please note the use of “homes” rather than “houses”.”

Councillor White replied as follows:-

“In developing their planning policy for providing housing choice within the new Local Plan, the Council produced an Objectively Assessed Housing Needs study which identified a need over the plan period for approximately 10% of new homes to be one bedroom, with 33% as two bedrooms.

Policy LP2 of the emerging Local Plan states that the Council will work with the development industry to deliver a mix of dwelling types, sizes and tenure and on major application sites will expect to see such a mix provided. The Council do need to take into account market demand and site viability constraints but the Council can expect, certainly on larger developments, a range of dwelling sizes to be provided and will work with developers to achieve this.

Unless a developer can provide strong viability evidence that smaller size dwellings are not viable on a particular site then the Council can choose to refuse applications if a good housing mix is not provided”.

56. A.1 - PLANNING APPLICATION- 18/01888/FUL - MULLEYS FARM, BENTLEY ROAD, LITTLE BROMLEY, MANNINGTREE, CO11 2PL

It was reported that this application had been referred to the Planning Committee at the request of Councillor Stock OBE, the local Ward Member.

The Committee had before it the published Officer report containing the key planning issues, relevant planning policies, planning history, any response from consultees, written representations received and a recommendation of approval.

At the meeting, an oral presentation was made by the Council’s Temporary Planning Team Leader (TF) in respect of the application.

Andy Pirie, on behalf of Mr and Mrs Christmas, who were the owners of Mulley’s Cottage spoke against the application.

Parish Councillor Jon Buxton, representing Little Bromley Parish Council, spoke against the application.

Councillor Stock OBE, the local Ward Member, spoke against the application.

Natalie Winstear, the agent on behalf of the applicant, spoke in support of the application.

Following discussion by the Committee, it was moved by Councillor Bray, seconded by Councillor Alexander and unanimously **RESOLVED** that, contrary to the Officer’s recommendation of approval, the Head of Planning (or equivalent authorised officer) be authorised to refuse planning permission for the development due to the following reasons:-

- Adverse impact on neighbour amenity due to noise impact.
- Lack of parking provision to meet potential B1 use.
- Adverse highway impact due to increased traffic.

57. **A.2 - PLANNING APPLICATION -18/00767/OUT - LAND TO THE NORTH OF STOURVIEW CLOSE, MISTLEY, CO11 1LT**

It was reported that outline planning permission for up to 70 dwellings with a new access road off Stourview Avenue, Mistley had been granted in November 2015 under ref. 15/01810/OUT and was subject to a Section 106 Agreement which required the provision of affordable housing, education and healthcare contributions together with the provision of open space and a habitat contribution.

It was further reported that the current application was for the same site and for the same development but proposed a modest increase in numbers from 70 to 72 dwellings and also to vary the terms of the previous Section 106 Agreement in order to remove the requirement for affordable housing and the infrastructure contributions. The applicants had submitted that, after following the grant of outline permission they had worked up the detailed drawings and the scale of the technical costs of the site then became apparent. Those costs had been found to be significant and had threatened the commercial viability of the project.

The Committee was informed that the applicants had therefore submitted a viability study in support of the application which had set out the costs. This has been the subject of detailed and lengthy consideration and testing by the Council's own independent consultants PNB Paribas. Further detailed information had also requested and had been provided by the applicants in respect of build costs and abnormal costs which had been accepted by the Council's consultants. They had therefore concluded that the proposed scheme could support a payment in lieu of some £0.26m and could not therefore fund the contributions or provide the affordable housing as required in the 2015 planning permission. The applicants had confirmed their agreement to a contribution of £0.26m.

The Committee was further informed that Officers were content that, subject to the carrying forward of the planning conditions from the earlier planning permission and a revised Section 106 planning obligation that made provision for the in lieu payment of £0.26m which would need to include the RAMs payment, together with the provision of on-site public open space and its maintenance, the principle of development on the site remained acceptable. However, it was acknowledged that the development would not be able to fully mitigate the impacts it was likely to have on the local infrastructure. The scale of development was in keeping with both the site's location on the edge of Mistley and with the need to facilitate on-site strategic landscaping, open space and the retention of existing landscape features. Furthermore, the proposal would ensure that the living conditions of existing and future residents would be protected from any materially detrimental impacts whilst significantly boosting housing supply within the District in line with the Council's own emerging Local Plan.

The Committee was made aware that the recommendation was therefore to approve outline planning permission subject to the completion of a legal obligation under Section 106 of the Town and Country Planning Act 1990 and the imposition of the previous conditions.

The Committee had before it the published Officer report containing the key planning issues, relevant planning policies, planning history, any response from consultees, written representations received and a recommendation of approval.

At the meeting, an oral presentation was made by the Council's Temporary Planning Team Leader (TF) in respect of the application.

An update sheet was circulated to the Committee prior to the meeting with details of representations that had been received from:

- (1) Mistley Parish Council;
- (2) Essex Police; and
- (3) Three local residents.

Will Vote, the agent on behalf of the applicant, spoke in support of the application.

It was moved by Councillor Harris and seconded by Councillor Placey that the Head of Planning be authorised to refuse planning for this development, which motion on being put to the vote was declared **LOST** on the Chairman's casting vote.

Following discussion by the Committee and advice provided by Officers, it was then moved by Councillor Fowler, seconded by Councillor Alexander and **RESOLVED** that consideration of this application be deferred in order for Officers to gather further information relating to the viability assessment.

58. A.3 - PLANNING APPLICATION -19/00610/FUL - LAND AT OAKMEAD ROAD, ST OSYTH, CO16 8NW

The Committee was informed that, with the agreement of the Chairman (Councillor White), this application had been deferred prior to the commencement of the meeting in order to allow the applicant to bring forward amended drawings for consideration with a view to seeking that the proposed access could revert to the position (as shown on the Outline Planning Approval) using the existing house access.

59. A.4 - PLANNING APPLICATION- 19/01261/FUL - LAND ADJACENT 2 WIVENHOE ROAD, ALRESFORD, CO7 8AD

It was reported that this application had been referred to the Planning Committee as one of the applicants was employed by Tendring District Council within the Planning Department.

Councillor Scott, who was present in the public gallery, had earlier placed on record in relation to Planning Application 19/01261/FUL that he was a local Ward Member.

Councillor Wiggins, who was present in the public gallery, had earlier placed on record in relation to Planning Application 19/01261/FUL that she was a local Ward Member.

The Committee had before it the published Officer report containing the key planning issues, relevant planning policies, planning history, any response from consultees, written representations received and a recommendation of approval.

At the meeting, an oral presentation was made by the Council's Temporary Planning Team Leader (TF) in respect of the application.

An update sheet was circulated to the Committee prior to the meeting with details of two additional letters of objection submitted by local residents.

Parish Councillor Ernie Osborne, representing Alresford Parish Council, spoke against the application.

Councillor Scott, a local Ward Member, spoke against the application.

Following discussion by the Committee, it was moved by Councillor Cawthron, seconded by Councillor Fowler and **RESOLVED** that, contrary to the Officer's recommendation of approval, the Head of Planning (or equivalent authorised officer) be authorised to refuse planning permission for the development due to the application being contrary to Policies QL9, QL11 and SPL3.

60. A.5 - PLANNING APPLICATION -19/01353/OUT - WISTERIA HOUSE, BACK LANE EAST, GREAT BROMLEY, CO7 7UE

It was reported that this application had been referred to the Planning Committee at the request of Councillor Scott, a local Ward Member.

Councillor Scott, who was present in the public gallery, had earlier placed on record in relation to Planning Application 19/01353/OUT that he was a local Ward Member.

Councillor Wiggins, who was present in the public gallery, had earlier placed on record in relation to Planning Application 19/01353/OUT that she was a local Ward Member.

Councillor Stock, who, had by this time left the meeting had earlier placed on record in relation to Planning Application 19/01353/OUT that he had a registered Disclosable Pecuniary Interest against that property.

The Committee had before it the published Officer report containing the key planning issues, relevant planning policies, planning history, any response from consultees, written representations received and a recommendation of Refusal.

At the meeting, an oral presentation was made by the Council's Planning Officer (AL) in respect of the application.

An update sheet was circulated to the Committee prior to the meeting with details of amendments to paragraphs 5.1, 5.2 and 6.52 of the officer's report.

Bill Marshall, a local resident, spoke in support of the application.

Councillor Scott, a local Ward Member, spoke against the application.

Michael Calder, the agent on behalf of the applicant, spoke in support of the application.

Following discussion by the Committee and advice provided by Officers, it was moved by Councillor Bray, seconded by Councillor Harris and unanimously **RESOLVED** that, contrary to the Officer's recommendation of refusal, the Head of Planning (or equivalent authorised officer) be authorised to approve planning permission for the development due to the contribution to Council's housing supply, subject to the following conditions:-

1. Application for the approval of Reserved Matters must be submitted before the expiration of three years from the date of this permission.

Reason - To comply with the requirements of Section 92 of the Town and Country Planning Act 1990.

2. The development hereby permitted shall be begun before the expiration of 2 years from the date of approval of the last of the Reserved Matters to be approved.

Reason - To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

3. No development shall be commenced until plans and particulars of "the Reserved Matters" referred to in the above conditions relating to the Appearance, Access, Landscaping, Layout and Scale have been submitted to and agreed in writing, by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason - The application as submitted does not provide sufficient particulars for consideration of these details.

4. Notwithstanding the provisions of Article 3, Schedule 2 Part 2 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no provision of fences, walls or other means of enclosures shall be erected along the northern or southern boundaries of the site or forward of the front elevation of the dwelling hereby approved except in accordance with details that shall previously be approved in writing by the Local Planning Authority. The approved screen walls and fences shall be erected prior to the dwelling to which they relate being first occupied and thereafter be retained in the approved form unless otherwise agreed in writing by the Local Planning Authority.

Reason - It is necessary for the local planning authority to be able to consider and control further development in order to ensure that landscape harm does not result in this edge of settlement location.

5. Notwithstanding the provisions of Article 3, Schedule 2 Part 1 Classes A, B, C and E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), there shall be no additions or alterations to the dwelling or its roof, nor shall any buildings, enclosures, swimming or other pool be erected except in accordance with drawings showing the design and siting of such additions and/or building(s) which shall previously have been submitted to and approved, in writing, by the Local Planning Authority.

Reason - It is necessary for the local planning authority to be able to consider and control further development in order to ensure that landscape harm does not result in this edge of settlement location.

6. The dwelling hereby permitted shall be single storey only.

Reason - In the interests of visual amenity having regard to the semi-rural character of this side of Back Lane East and the open countryside beyond.

The meeting was declared closed at 9.05 pm

Chairman

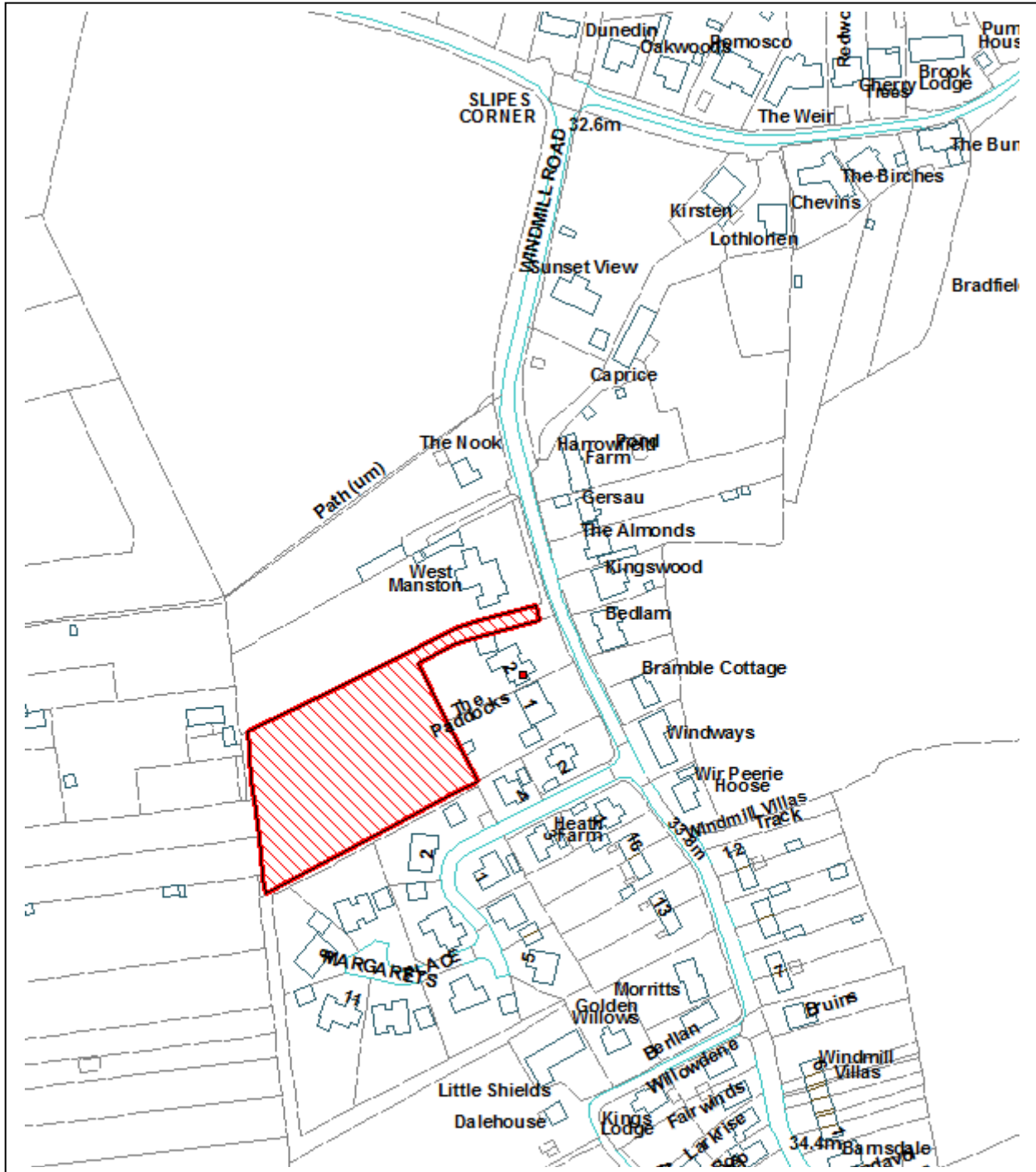
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PLANNING COMMITTEE

19 NOVEMBER 2019

REPORT OF THE HEAD OF PLANNING

A.1 PLANNING APPLICATION – 19/00738/FUL – LAND REAR OF 1 & 2 THE PADDOCKS WINDMILL ROAD BRADFIELD CO11 2QR



DO NOT SCALE

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Application: 19/00738/FUL

Town / Parish: Bradfield Parish Council

Applicant: ARC LTD

Address: Land rear of 1 & 2 The Paddocks Windmill Road Bradfield CO11 2QR

Development: Erection of 5no. detached bungalows.

1. Executive Summary

- 1.1 This application is before the Planning Committee as it was called in by Councillor Fairley on the grounds that the proposal is a form of backland development that will be harmful to neighbours privacy and harmful to the countryside. Issues are also raised that the access point is unsafe and that there is a telegraph pole in front of the access.
- 1.2 The application site falls outside of a recognised settlement development boundary within both the Adopted and Emerging Local Plans. However, given the Council is unable to demonstrate a five year supply of housing, the proposal has been assessed against the economic, social and environmental strands of sustainability.
- 1.3 Following a recent appeal decision it has previously been determined the site is socially acceptable, while the development of five dwellings will bring small economic benefits to the area.
- 1.4 While the scheme does represent a form of backland development, it is in accordance with the requirements of Adopted Local Plan Policy HG13 and Emerging Local Plan Policy LP8.
- 1.5 The development will not result in harm to neighbouring amenities, harm to any trees, and Essex Highways Authority have raised no objections subject to conditions.

Recommendation:

That the Head of Planning be authorised to grant planning permission for the development subject to:-

- a) Subject to the conditions stated in section 8.2

2. Planning Policy

The following Local and National Planning Policies are relevant to this planning application.

NPPF National Planning Policy Framework February 2019
National Planning Practice Guidance

Tendring District Local Plan 2007:

COM6 Provision of Recreational Open Space for New Residential Development
EN1 Landscape Character
EN6A Protected Species
EN11A Protection of International Sites European Sites and RAMSAR Sites
HG1 Housing Provision
HG9 Private Amenity Space

HG13 Backland Residential Development
QL1 Spatial Strategy
QL9 Design of New Development
QL10 Designing New Development to Meet Functional Needs
QL11 Environmental Impacts and Compatibility of Uses
TR1A Development Affecting Highways
TR7 Vehicle Parking at New Development

Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017):

CP1 Sustainable Transport and Accessibility
HP5 Open Space, Sports & Recreation Facilities
LP1 Housing Supply
LP2 Housing Choice
LP3 Housing Density and Standards
LP4 Housing Layout
LP8 Backland Residential Development
PPL3 The Rural Landscape
PPL4 Biodiversity and Geodiversity
SP1 Presumption in Favour of Sustainable Development
SPL1 Managing Growth
SPL3 Sustainable Design

Local Planning Guidance:

Essex County Council Car Parking Standards - Design and Good Practice

Status of the Local Plan

The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF (2019) 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 48 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. As of 16th June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

Section 1 of the Local Plan (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) was examined in January and May 2018 and the Inspector's initial findings were published in June 2018. They raise concerns, very specifically, about the three 'Garden Communities' proposed in north Essex along the A120 designed to deliver longer-term sustainable growth in the latter half of the plan period and beyond 2033. Further work is required to address the Inspector's concerns and the North Essex Authorities are considering how best to proceed.

With more work required to demonstrate the soundness of the Local Plan, its policies cannot yet carry the full weight of adopted policy, however they can carry some weight in the determination of planning applications. The examination of Section 2 of the Local Plan will progress once matters in relation to Section 1 have been resolved. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 48 of the NPPF, they will be considered and, where appropriate, referred to in decision notices. In general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.

In relation to housing supply:

The NPPF 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 an appropriate buffer to ensure choice and competition in the market for land, account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible, or housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, paragraph 11 d) of the NPPF requires applications for housing development needing to be assessed on their merits, whether sites are allocated for development in the Local Plan or not. At the time of this decision, the supply of deliverable housing sites that the Council can demonstrate falls below 5 years and so the NPPF says that planning permission should be granted for development unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework as a whole. Determining planning applications therefore entails weighing up the various material considerations. The housing land supply shortfall is relatively modest when calculated using the standard method prescribed by the NPPF. In addition, the actual need for housing was found to be much less than the figure produced by the standard method when tested at the recent Examination In Public of the Local plan. Therefore, the justification for reducing the weight attributed to Local Plan policies is reduced as is the weight to be given to the delivery of new housing to help with the deficit.

3. Relevant Planning History

15/01726/FUL	Erection of 2 No. detached dwellings and garages.	Approved	22.02.2016
16/00595/DISCON	Discharge of condition 07 (Construction Method Statement) and 09 (Landscaping Scheme) of planning permission 15/01726/FUL.	Approved	17.06.2016

4. Consultations

ECC Highways Dept

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

1. Prior to occupation of the development a 1.5 metre x 1.5 metre pedestrian visibility splay, as measured from and along the highway boundary, shall be provided on both sides of the vehicular access. Such visibility splays shall be retained free of obstruction above 900mm at all times. These visibility splays must not form part of the vehicular surface of the access.

Reason: To provide adequate inter-visibility between the users of the access and pedestrians in the adjoining public highway in the interest of highway safety in accordance with policy DM1

2. Prior to occupation of the development a vehicular turning facility, as proposed in Block Plan, drawing no. CCWR -01 B shall be constructed, surfaced and maintained free from obstruction within the site at all times for that sole purpose.

Reason: To ensure that vehicles can enter and leave the highway in a forward gear in the interest of highway safety in accordance with policy DM1.

3. No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.

Reason: To avoid displacement of loose material onto the highway in the interests of highway safety in accordance with policy DM1.

4. Prior to the occupation of any of the proposed dwellings, the proposed private drive shall be constructed to a width of 5.3 metres for at least the first 6 metres from the back of the footway and provided with an appropriate dropped kerb crossing of the footway.

Reason: To ensure that vehicles can enter and leave the highway in a controlled manner and to ensure that opposing vehicles can pass clear of the limits of the highway, in the interests of highway safety in accordance with policy DM1.

5. All single garages should have a minimum internal measurement of 7m x 3m and all double garages should have a minimum internal measurement of 7m x 5.5m.

Reason: To encourage the use of garages for their intended purpose and to discourage on-street parking, in the interests of highway safety and in accordance with Policy DM8.

6. Prior to commencement of the development, the areas within the curtilage of the site for the purpose of loading / unloading / reception and storage of building materials and manoeuvring of all vehicles, including construction traffic shall be provided clear of the highway.

Reason: To ensure that appropriate loading / unloading facilities are available to ensure that the highway is not obstructed during the construction period in the interest of highway safety in accordance with policy DM1.

The above conditions are to ensure that the proposal conforms to the relevant policies contained within the County Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

Informative 1: As the private access road is less than 5.5 metres in width consideration should be given to provide one suitable vehicle passing place within the curtilage of the site at a minimum dimension of 2 metres wide x 7.5 metres in length, adjacent to Plot 1. Details to be agreed in writing with the local Planning Authority, this is to

ensure that medium to large vehicles can pass clear of the limits of the highway.

Informative 2: Prior to the first use of the vehicular access to the development arrangements will need to be made with the respective Statutory Undertakers to arrange for the re-location of the telegraph pole at the existing access so it provides the required width in and out of the development.

Informative 3: On the completion of the Development, all roads, footways/paths, cycle ways, covers, gratings, fences, barriers, grass verges, trees, and any other street furniture within the Site and in the area it covers and any neighbouring areas affected by it, must be left in a fully functional repaired/renovated state to a standard accepted by the appropriate statutory authority.

Informative 4: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

5. Representations

- 5.1 Bradfield Parish Council have objected to the application. They have raised numerous concerns relating to the narrow width of the access to the site, which they feel will not be sufficient to cope with 10 cars and visitors associated with the five dwellings. The access also enters onto Windmill Road on a slight bend at its narrowest point, which could result in highway safety issues given traffic on Windmill Road has increased in recent years.
- 5.2 Further concerns relate to the site being backland development with a long narrow track, and it is questioned if there is a need for more bungalows in this location given there has previously been 24 bungalows constructed within Bradfield in the past four years.
- 5.3 There have also been six letters of objection received, with a summary of the concerns raised below:
- The access will not be able to cope with the additional traffic;
 - Concerns where the telegraph pole will be situated;
 - Site is outside of a settlement development boundary;
 - Land has a covenant that states it cannot be developed on;
 - Could set a harmful precedent for more backland development;
 - Will put more pressure on local infrastructure;
 - Loss of character to the area; and
 - Impacts of construction works.
- 5.4 One further letter has been received that is not classed as an objection letter, but questions the use of the land highlighted in blue within the submitted Site Location Plan. In response to this, no information has been provided as to its use; as this area does not form part of the application site there is no requirement for this information to be provided.
- 5.5 There has also been one letter of support received.

6. Assessment

Site Description

- 6.1 The application is located on western side of Windmill Road to the rear of two detached dwellings (1 and 2 The Paddocks) that front Windmill Road. The site is largely laid to grass, however there is a mound of soil on part of the site from the neighbouring development to the south. The site was previously amenity land served by an access road between Number 2 The Paddocks and West Manston to the north. The site is separated from West Manston by a line of conifers. Windmill Road itself contains a mixture of dwelling types, with examples of single and two storey designs.
- 6.2 The site falls outside of a recognised Settlement Development Boundary within the Adopted Tendring Local Plan 2007. Within the Emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft, the access falls within the Settlement Development Boundary for Bradfield, while the rest of the site falls outside.

Planning History

- 6.3 The land adjacent to the south of the application site has recently been the subject of a number of planning applications. Under planning references 16/00701/OUT and 16/01413/DETAIL planning permission was granted for six dwellings. Then under planning references 16/01614/OUT and 17/00166/DETAIL an additional four dwellings were approved. These 10 dwellings have now been constructed.
- 6.4 Under planning reference 15/01726/FUL, planning permission was granted for two dwellings, which have now been constructed and are known as 1 and 2 The Paddocks.
- 6.5 Under planning reference 17/01065/FUL, permission was initially refused for the erection of one dwelling, on the grounds that the site fell outside of a recognised settlement development boundary and the removal of the hedgerow required for visibility splays would erode the rural character of the road and would therefore result in overriding harm to the character and appearance of the surrounding area.
- 6.6 However, under appeal reference APP/P1560/W/17/3184415 (Land adjacent to Sunset View, Windmill Road, Bradfield, dated 21 February 2018) this decision was allowed, with the Inspector stating that *“On balance . . . I find that the adverse impacts in this case, arising from the location of the appeal site outwith the development boundary for Bradfield, do not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.”*

Proposal

- 6.7 This application seeks full planning permission for the erection of five detached bungalows. The layout plan shows the bungalows to be served by three bedrooms, garages and accessed from Windmill Road in a col-de-sac arrangement.

Principle of Development

- 6.8 The application site lies outside of a Settlement Development Boundary as defined within the Adopted Tendring Local Plan 2007 and the Emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.
- 6.9 Saved Tendring District Local Plan (2007) Policy QL1 sets out that development should be focussed towards the larger urban areas and to within development boundaries as defined within the Local Plan. These sentiments are carried forward in emerging Policy SPL1 of the Publication Draft.

- 6.10 The National Planning Policy Framework 2019 (NPPF) 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 an appropriate buffer to ensure choice and competition in the market for land, account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible, or housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, paragraph 11 d) of the NPPF requires applications for housing development needing to be assessed on their merits, whether sites are allocated for development in the Local Plan or not.
- 6.11 At the time of this report, the supply of deliverable housing sites that the Council can demonstrate falls below 5 years and so the NPPF says that planning permission should be granted for development unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework as a whole. Determining planning applications therefore entails weighing up the various material considerations. The housing land supply shortfall is relatively modest when calculated using the standard method prescribed by the NPPF. In addition, the actual need for housing was found to be much less than the figure produced by the standard method when tested at the recent Examination in Public of the Local plan. Therefore, the justification for reducing the weight attributed to Local Plan policies is reduced as is the weight to be given to the delivery of new housing to help with the deficit.
- 6.12 Whilst it is recognised that there would be conflict with Saved Policy QL1 and Emerging Policy SPL1 in terms of the site being sited outside the settlement development boundary, as stated above, in the context of the 5 year housing land supply paragraph 11 d) of the NPPF requires applications for housing development to be assessed on their merits, whether sites are allocated for development in the Local Plan or not and it is important to consider whether any circumstances outweigh this conflict.
- 6.13 Therefore, at this present time, it is correct to assess the housing development on its merits against the sustainable development objectives set out within Paragraph 8 of the NPPF. The economic objective, a social objective and an environmental objective are therefore assessed below.
- Economic:
- 6.14 It is considered that the proposal for five dwellings would contribute economically to the area, for example by providing employment during the construction of the development and from future occupants using the nearby facilities, and so meets the economic arm of sustainable development.
- Social:
- 6.15 Socially, it is necessary to consider the proximity to services and facilities, such as healthcare, schools, convenience shopping and jobs and whether these would be accessed by sustainable modes of transport. Bradfield Heath has only a small convenience store and a good bus route (as established by the Council's "Establishing a Settlement Hierarchy", 2016). Bradfield Heath coalesces with Bradfield, which has a primary school. At the application site access onto Windmill Road there are pedestrian footpaths that lead to the bus stops, primary school and a shop located nearby. As such the proposed site is deemed to be socially sustainable.
- 6.16 This view is reinforced by appeal decision APP/P1560/W/17/3184415 (Land adjacent to Sunset View, Windmill Road, Bradfield). Within this the Inspector stated the following:

“Whilst, as a smaller rural settlement, Bradfield may not have the full range of services and facilities that might be required by residents on an everyday basis, I saw a primary school, public houses, a church, local shop etc. Moreover, the Council clearly considers it a sufficiently sustainable settlement to warrant in principle at least, extending the development boundary in the vicinity of the appeal site to accommodate additional development. To my mind, future occupiers would be no more reliant on the private car to access those services and facilities required on an everyday basis than those living in the immediately adjacent properties, properties that the Council considers appropriate for inclusion within the proposed revised settlement boundary . . . I therefore conclude that, in principle, the appeal site is an appropriate location for new residential development and that allowing the appeal would not undermine the District’s sustainable pattern for growth.”

Environmental:

- 6.17 The environmental role is about contributing to protecting and enhancing the natural built and historic environment which is considered below under Impact on Surrounding Area.

Impact on Surrounding Area:

- 6.18 The development involves the construction of five dwellings in a 'backland' location to the rear of the established residential frontage along Windmill Road. With regards to Policy HG13 of the 2007 Local Plan (and echoed in policy LP8 of the draft Local Plan), it states proposals for the residential development of backland sites must comply with the following criteria:
- i. the site lies within a defined settlement development boundary and does not comprise land allocated or safeguarded for purposes other than a residential use;
 - ii. where a proposal includes existing private garden land which would not result in less satisfactory access or off-street parking arrangements, an unacceptable reduction in existing private amenity space or any other unreasonable loss of amenity to existing dwellings;
 - iii. a safe and convenient means of vehicular and pedestrian access/egress can be provided that is not likely to cause undue disturbance or loss of privacy to neighbouring residents or visual detriment to the street scene. Long or narrow driveways will be discouraged;
 - iv. the proposal does not involve "tandem" development using a shared access;
 - v. the site does not comprise an awkwardly shaped or fragmented parcel of land likely to be difficult to develop in isolation or involve development which could prejudice a more appropriate comprehensive development solution;
 - vi. the site is not on the edge of defined settlements and likely to produce a hard urban edge or other form of development out of character in its particular setting; and
 - vii. the proposal would not be out of character with the area or set a harmful precedent for other similar forms of development.
- 6.19 The main problems that can arise as a result of backland development include undermining the established character of an area (especially if similar schemes were to be repeated elsewhere in a locality); dwelling plots appearing cramped relative to their surroundings; the fragmentation of established gardens with a loss of mature landscaping; and the infringement of neighbouring residents' amenities. Development behind an established building line can also appear incongruous, particularly with isolated dwellings.

6.20 There must also be proper means of access to backland development, which is safe and convenient for both drivers and pedestrians, with a turning area where necessary to avoid the need for vehicles to reverse onto a public highway. A proposed access should avoid excessive disturbance or loss of privacy to neighbouring residents through, for example, an access drive passing unreasonably close to an adjoining dwelling. The likely frequency of use by vehicular traffic and the suitability of the access for service vehicles and the emergency services will also be relevant material considerations.

6.21 In respect of the policy criteria noted above the development is considered to meet the requirements as follows;

i. the site is not located within a defined settlement boundary in either the adopted or emerging local plans; however is not designated for any particular use;

ii. the plans show that the private amenity areas for all plots will meet the requirements of Policy HG9, while the proposal will not result in loss of any existing private amenity space for 1 and 2 The Paddocks. Further, there is sufficient off-street parking for all dwellings, while the layout has been designed in such a way to ensure significant distance to the nearest neighbouring properties.

iii. the private access would be located to the north-eastern corner of the site, off Windmill Road. While there are neighbouring properties to each side of this access, there is good separation distances to each, while the comings and goings associated with five dwellings is not considered to be excessively harmful. Following recent approvals to the south of the site there is a similar form of development constructed, while the access is currently in situ. Therefore there is not considered to be significant visual harm to the street scene.

It is acknowledged the proposal includes a long and relatively narrow driveway, however given the lack of visual harm to the street scene and that Essex Highways Authority do not object, on balance the identified harm is not considered sufficient to recommend a reason for refusal.

iv. the proposal does not represent a form of tandem development using a shared access.

v. the site is of a regular shape and would not compromise a more comprehensive development solution.

vi. the application site is sited in a backland location between residential development to the east fronting Windmill Road and to the west fronting Straight Road. To the south are recently constructed properties following recent planning permissions. As such the site does not form part of the edge of the settlement and views of the site would be limited from surrounding public vantage points. A public footpath runs to the north but the development would be viewed against the backdrop of existing development to the rear and therefore have minimal visual intrusion. The single storey nature of the properties would further reduce their prominence. As such the development would not adversely impact upon the character or pattern of the settlement and would not form a hard urban edge. The siting of residential development around the plot in question means that the development would not appear as a prominent intrusion into open countryside or out of character.

vii. the proposal would not be out of character with the area or set a harmful precedent for other similar forms of development.

As stated above the proposal would be located amongst existing development, particularly that recently approved adjacent to the south of the site. Given this and the development to

the east and west of the site, the proposal represents an infill development that will not appear out of character or set a harmful precedent.

Design, Layout and Appearance

- 6.22 The adopted Tendring District Local Plan (2007) "Saved" Policies QL9, QL10 and QL11 seek to ensure that all new development makes a positive contribution to the quality of the local environment and character, by ensuring that proposals are well designed, relate satisfactorily to their setting and are of a suitable scale, mass and form. These sentiments are carried forward in Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).
- 6.23 The development will include a total of five dwellings, all of which will be detached, single storey and served by garages. The proposed layout shows a mini cul-de-sac which is largely in-keeping with the development recently approved adjacent to the south. The submitted plans include three different designs, all of which incorporate key features including front gables, bay windows and a brick plinth. These features help to soften the dwellings' appearance and ensure they sit more comfortably within their surrounds.
- 6.24 Policy HG9 of the Saved Tendring Local Plan 2007 states that private amenity space for a dwelling of three bedrooms or more should be a minimum of 100 square metres. The submitted plans show that this will be achieved for all five new dwellings.

Impact to Residential Amenities

- 6.25 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'. These sentiments are carried forward in Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).
- 6.26 There are a number of neighbouring properties located to the east, south and west of the site. However, given there is a minimum 20 metres separation distance and that the dwellings are all single storey, there is not considered to be harm with respect to overlooking, loss of light or the development appearing imposing.

Highway Safety

- 6.27 Essex County Council as the Highway Authority has been consulted on the application and has stated that they have no objections subject to conditions relating to visibility splays, vehicular turning facilities, the use of no unbound materials and the width of the private drive.
- 6.28 Furthermore, the Council's Adopted Parking Standards require that for dwellings with 2 or more bedrooms that a minimum of 2 parking spaces is required. Parking spaces should measure 5.5 metres by 2.9 metres and garages, if being relied on to provide a parking space, should measure 7 metres by 3 metres internally. The submitted layout supplied shows that these are comfortably adhered to.

Tree and Landscape Impacts

- 6.29 The main body of the application site is set to grass and does not contain any trees or other significant vegetation. Within the grounds of the property immediately to the north of the application site there are several trees situated close to the boundary fence adjacent to the access road. These trees will not be affected by the development proposal.

- 6.30 The northern boundary of the main body of the application site is demarcated by an established conifer hedge, most of which has been trimmed although one or two appear to have been left untrimmed. This landscape feature is of little merit.
- 6.31 The southern boundary of the land is planted with an established Hawthorn hedge which forms a pleasant boundary feature. However it has little amenity value and does not fall within the scope of legislation under which it could be afforded formal legal protection.

Legal Obligations

- 6.32 Policy COM6 of the adopted Tendring District Local Plan 2007 states "For residential development below 1.5 hectares in size, developers shall contribute financially to meet the open space requirements of the development in proportion to the number and size of dwellings built".
- 6.33 There is currently a deficit of 0.83 hectares of equipped play in Bradfield, however there is adequate formal open space to cope with some additional development. There is one play area located in the village of Bradfield, and is classified as a Local Equipped Area for Play. Some works were recently carried out to refurbish the current play area, however this has not reduced the current deficit. Therefore it is felt that a contribution is justified and relevant to this application, and that the money would be spent at the closest play area in Bradfield.
- 6.34 A unilateral undertaking has been completed to secure this legal obligation and to ensure compliance with saved policy COM6.

Habitats Regulation Assessment

- 6.35 Following Natural England's recent advice and the introduction of Zones of Influences around all European Designated Sites (i.e. Ramsar, Special Protection Areas and Special Area of Conservation); within Zones of Influences (which the site falls within) Natural England are requesting financial contributions to mitigate against any recreational impact from new dwellings.
- 6.36 Legal advice has been sought in relation to the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) which supports the view that Tendring District Council can seek financial contributions in accordance with the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). A Habitat Regulations Assessment has therefore been undertaken to confirm that the mitigation will be the RAMS level contribution as recommended by Natural England. It is therefore considered that this contribution is sufficient to mitigate against any adverse impact the proposal may have on the Stour and Orwell Estuaries Ramsar and SPA. The contribution is secured by unilateral undertaking. There is therefore certainty that the development would not adversely affect the integrity of the Stour and Orwell Estuaries Ramsar and SPA in accordance with policies EN6 and EN11a of the Saved Tendring District Local Plan 2007, Policy PPL4 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

Other Considerations

- 6.37 In order to meet the visibility splays requested by Essex Highways Authority the existing fencing arrangement for Number 2 The Paddocks would need to be altered. Therefore any recommendation for approval would be subject to this being agreed. The agent for the application has stated the fence in question is a contravention of a covenant imposed on the site, and is currently being handled by solicitors separately to this planning application.

6.38 Neighbour objections have noted that there is an existing telegraph pole to the front of the access point that would need to be removed for access to the site to be achievable. Any recommendation for approval would be subject to the operator of this telegraph pole agreeing to its relocation. The agent for the application has confirmed that the relocation of this telegraph pole has been agreed with the telecommunications company.

7. Conclusion

7.1 In conclusion, while the site falls outside of a recognised Settlement Development Boundary the Council is unable to demonstrate a five year housing supply and must therefore assess the application on its own merits. The proposal would represent an economic and social form of sustainable development. While the scheme does represent a form of backland development, it is in accordance with the requirements of Adopted Local Plan Policy HG13 and Emerging Local Plan Policy LP8. The development will not result in harm to neighbouring amenities, while Essex Highways Authority have raised no objections. Therefore the application is recommended for approval.

8. Recommendation

8.1 The Planning Committee is recommended to grant planning permission subject to the following conditions and informatives.

8.2 Conditions and Reasons

1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason - To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2 The development hereby permitted shall be carried out in accordance with the following approved plans, the untitled Site Location Plan, and drawing numbers CCWR-01 Revision C, CCWR-02 Revision B, CCWR-03 Revision A, CCWR-04.

Reason - For the avoidance of doubt and in the interests of proper planning.

3 Prior to occupation of the development a 1.5 metre x 1.5 metre pedestrian visibility splay, as measured from and along the highway boundary, shall be provided on both sides of the vehicular access. Such visibility splays shall be retained free of obstruction above 900mm at all times. These visibility splays must not form part of the vehicular surface of the access.

Reason: To provide adequate inter-visibility between the users of the access and pedestrians in the adjoining public highway in the interest of highway safety.

4 Prior to occupation of the development a vehicular turning facility, as proposed in Block Plan, drawing no. CCWR -01 B shall be constructed, surfaced and maintained free from obstruction within the site at all times for that sole purpose.

Reason: To ensure that vehicles can enter and leave the highway in a forward gear in the interest of highway safety.

5 No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.

Reason: To avoid displacement of loose material onto the highway in the interests of highway safety.

- 6 Prior to the occupation of any of the proposed dwellings, the proposed private drive shall be constructed to a width of 5.3 metres for at least the first 6 metres from the back of the footway and provided with an appropriate dropped kerb crossing of the footway.

Reason: To ensure that vehicles can enter and leave the highway in a controlled manner and to ensure that opposing vehicles can pass clear of the limits of the highway, in the interests of highway safety.

- 7 No above ground works shall take place until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

Reason - In the interests of visual amenity as insufficient information has been submitted within the application for full consideration of these details.

- 8 Prior to the commencement of any above ground works, a scheme of hard and soft landscaping works for the site shall be submitted to and approved, in writing, by the Local Planning Authority. The scheme shall include any proposed changes in ground levels and also accurately identify spread, girth and species of all existing trees, shrubs and hedgerows on the site and indicate any to be retained, together with measures for their protection which shall comply with the recommendations set out in the British Standards Institute publication "BS 5837: 2012 Trees in relation to design, demolition and construction.

Reason - To enhance the visual impact of the proposed works.

- 9 All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details shall be carried out during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be agreed in writing by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees in writing to a variation of the previously approved details.

Reason -To enhance the visual impact of the proposed works.

8.3 Informatives

Positive and Proactive Statement:

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

Legal Agreement Informative - Open Space/Play Space Contribution:

This application is the subject of a legal agreement and this decision should only be read in conjunction with this agreement. The agreement addresses the following issues: Public Open Space financial contribution in accordance with Policy COM6 of the adopted Tendring District Local Plan (2007) and Policy HP5 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

Legal Agreement Informative - Recreational Impact Mitigation:

This application is the subject of a legal agreement and this decision should only be read in conjunction with this agreement. The agreement addresses the following issues: mitigation against any recreational impact from residential developments in accordance with Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

Highways Informatives:

As the private access road is less than 5.5 metres in width consideration should be given to provide one suitable vehicle passing place within the curtilage of the site at a minimum dimension of 2 metres wide x 7.5 metres in length, adjacent to Plot 1. Details to be agreed in writing with the local Planning Authority, this is to ensure that medium to large vehicles can pass clear of the limits of the highway.

Prior to the first use of the vehicular access to the development arrangements will need to be made with the respective Statutory Undertakers to arrange for the re-location of the telegraph pole at the existing access so it provides the required width in and out of the development.

On the completion of the Development, all roads, footways/paths, cycle ways, covers, gratings, fences, barriers, grass verges, trees, and any other street furniture within the Site and in the area it covers and any neighbouring areas affected by it, must be left in a fully functional repaired/renovated state to a standard accepted by the appropriate statutory authority.

All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

9. Additional Considerations

Public Sector Equality Duty (PSED)

- 9.1 In making your decision you must have regard to the PSED under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions to:
- 9.2 A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- 9.3 B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s); and
- 9.4 C. Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.
- 9.5 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, being married or in a civil partnership, race including colour, nationality and ethnic or national origin, religion or belief, sex and sexual orientation.

- 9.6 The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in section 149 and section 149 is only one factor that needs to be considered, and may be balanced against other relevant factors.
- 9.7 It is considered that the recommendation to grant permission in this case would not have a disproportionately adverse impact on a protected characteristic.

Human Rights

- 9.8 In making your decision, you should be aware of and take into account any implications that may arise from the Human Rights Act 1998 (as amended). Under the Act, it is unlawful for a public authority such as the Tendring District Council to act in a manner that is incompatible with the European Convention on Human Rights.
- 9.9 You are referred specifically to Article 8 (right to respect for private and family life), Article 1 of the First Protocol (protection of property) and Article 14 (right to freedom from discrimination).
- 9.10 It is not considered that the recommendation to grant permission in this case interferes with local residents' right to respect for their private and family life, home and correspondence or freedom from discrimination except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation to grant permission is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

Finance Implications

- 9.11 Local finance considerations are a matter to which local planning authorities are to have regard in determining planning applications, as far as they are material to the application.
- 9.12 The New Homes Bonus (NHB) is one local finance consideration capable of being a material consideration to which the weight given shall be determined by the decision maker. The NHB is a payment to local authorities to match the Council Tax of net new dwellings built, paid by Central Government over six consecutive years. In this instance, it is not considered to have any significant weight attached to it that would outweigh the other considerations.

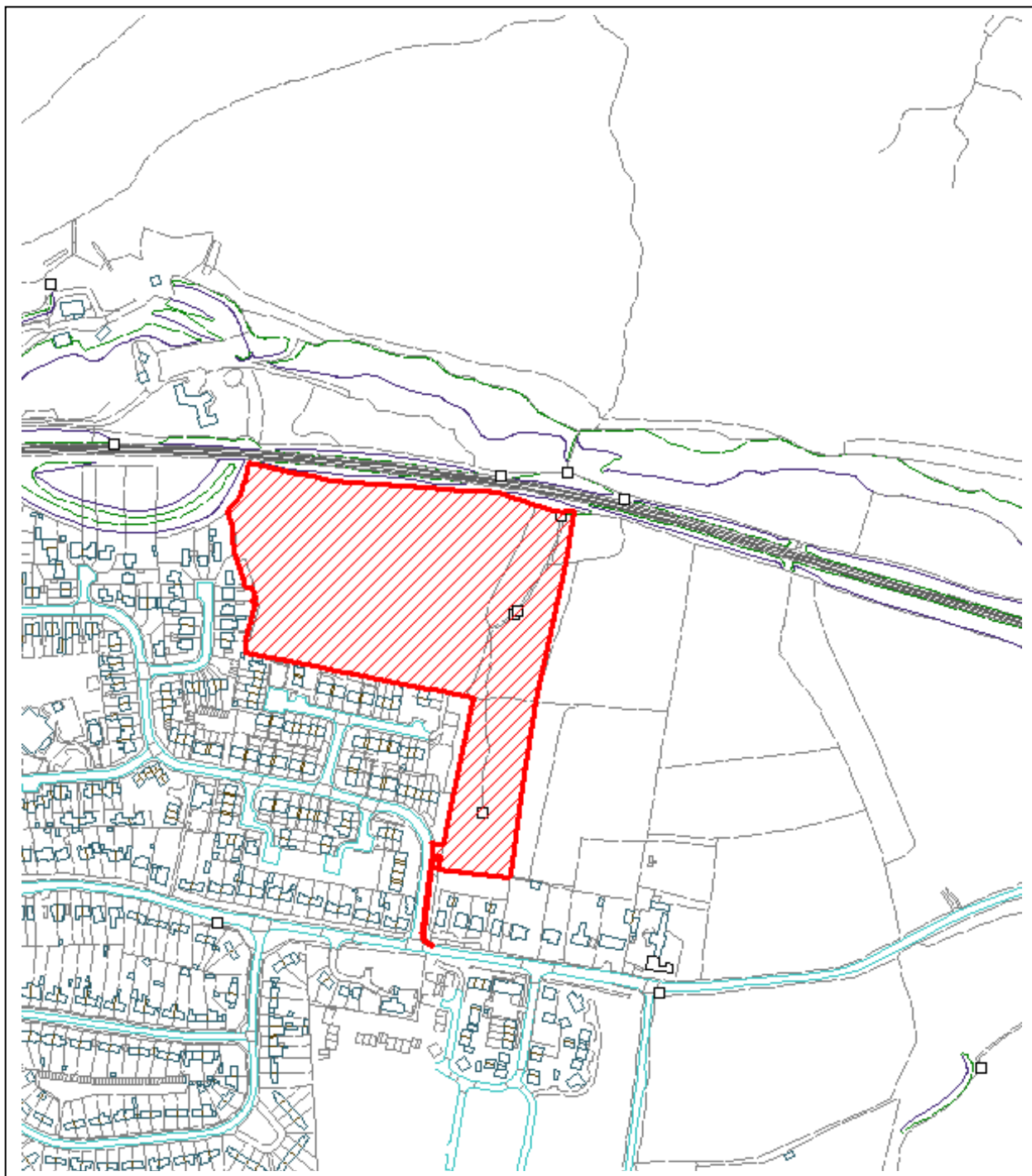
10. Background Papers
None

PLANNING COMMITTEE

22 October 2019

REPORT OF THE HEAD OF PLANNING

A.2 PLANNING APPLICATION – 18/00767/OUT – LAND TO NORTH OF STOURVIEW CLOSE, MISTLEY, CO11 1LT



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Application: 18/00767/OUT

Town / Parish: Mistley Parish Council

Applicant: Rose Builders (Properties) Limited

Address: Land to The North of Stourview Close Mistley CO11 1LT

Development: Proposed new access road and the erection of up to 72 dwellings and associated works.

1. Executive Summary

1.1 This application was deferred from Planning Committee on 22 October 2019 for further clarification to be sought on the Viability Study submitted in support of the application (this has been published on TDC Public Access) to vary the terms of the existing S106 associated with application ref. 15/01810/OUT, which was for up to 70 dwellings with a new access road off Stourview Avenue, Mistley, which was approved on 30 May 2017.

1.2 The aforementioned Section 106 Agreement, based on the proposed 70 dwellings, made provisions for the following:

- **Affordable Housing:** 5 dwellings to be 'gifted' to the Council (i.e. transferred to the Council or a nominated partner or trust at zero cost);
- **Education:** Circa £514K; based on Primary School generator of £12,172 per place (equivalent to circa £255K based on requirement for 21 primary school places); and Secondary School generator of £18,491 per place (equivalent to circa £258K based on 14 secondary school places);
- **Healthcare provision:** Circa £21K; base on £301.72 per dwelling;
- **Habitat contribution:** £3K; and
- **Provision and transfer/management of the public open space;** and
- **Accordingly, in summary the S106 generated a requirement for 5 'gifted' affordable houses and a financial contribution of circa £538K.**

1.3 The current application for the same site and the same development but for a modest increase in numbers from 70 to 72 dwellings, and which has been subject to the same statutory and non-statutory consultations, would generate the following updated S106 requirements:

- **Affordable Housing:** Paragraph 6.34 of this report sets out the policy requirements in relation to the provision of affordable housing. The adopted Local Plan policy HG4 requires 40% affordable homes to be provided on site and the emerging Local Plan policy LP4 requires 30% and includes some flexibility allowing for onsite provision plus a financial contribution to facilitate off-site provision. However, on 29th October the Planning Policy and Local Plan Committee considered a report detailing delivery of affordable homes in the district and agreed amended policy wording to be suggested to the Local Plan Inspector. The amended wording requires 30% on-site provision rather than any alternative mechanisms. 30% provision for the proposed 72 dwellings would require 21 affordable homes to be provided on the site. **Education:** Circa £777K; based on the assumption that the 72 dwellings would all be 2 or more bedrooms and an Early Years & Childcare (EY & C) generator of £17,422

per place (equivalent to circa £113K based on requirement for 6.48 places); a Primary School generator of £15,281 per place (equivalent to circa £330K based on requirement for 21.6 places); and Secondary School generator of £23,214 per place (equivalent to circa £334K based on requirement for 14.4 places);

- Healthcare contribution: Circa £21K;
- Provision and transfer/management of the public open space;
- RAMS contribution of £8,805,60 based on £122.30 per dwelling.
- Accordingly, in summary the S106 would, as updated, generate a requirement for 5 'gifted' affordable houses and a financial contribution of circa £807K.

1.4 Notwithstanding the above, this application seeks to vary the terms of the previous S106 Agreement to remove the requirement for affordable housing and the aforementioned infrastructure contributions (at least in part). In support of the application, the applicants have submitted that, following the grant of the outline permission in 2017, they have worked up the detailed drawings and the scale of the technical costs of the site became apparent and have been found to be significant and threaten the commercial viability of the project. They have submitted that the additional costs derive largely from the following components of the scheme:

- There is a relatively long access road required to access the site along which no units are proposed/ could be accommodated. Not only is such a road expensive, but it also means that the financial return from house sales happens at a later point than normal;
- Where the access road crosses a spring, significant geotechnical design and construction work will be needed;
- The route of the access road is parallel to the stream and is of suspect stability. This will require further investigation and design work to address. It will also require a retaining wall along its length to allow for the cross fall;
- Where the road crosses the stream, a substantial culvert structure will be required;
- Modelling of the stream needs to be undertaken to understand the flows;
- There are no straight-forward locations in which to site the attenuation basin. The best location in the north-east corner suffers from steep gradients. Slope stability will need to be adequately engineered to accommodate the basin;
- Site levels mean that some parts of the site cannot be drained by gravity to the public sewer. A pumped solution will add cost to the project and is complicated by having to provide a deep chamber;
- Retaining walls are required across the residential part of the site to deal with the challenging site levels;
- Due to the proximity of the adjacent railway line, the project may need Network Rail sign-off and retained funds to underwrite development on the site; and
- Design fees are likely to be almost double the equivalent of similar sized project on level ground. Additional geotechnical fees associated with the access road would be in addition to this.

1.5 The applicants have argued that development of the site is unlikely to come forward and deliver housing and that the waiving of the requirements contained in the S106 is justified and essential.

- 1.6 To support this position, the applicants submitted a Viability Study setting out the costs. The Study has been subject of detailed and lengthy consideration and testing by the Council's own independent consultants PNB Paribas, which has included requests for additional detailed information in respect of build costs and abnormal costs. Following these lengthy discussions, the Council's consultants concluded that, allowing for a developer profit level of 16.67% (profit on gross (GDV) and net development value (NDV), the development can contribute £260K, but not the full contributions or the affordable housing as required by the earlier outline planning permission, or Local Plan policy. The applicants have confirmed their agreement to this level of contribution, which is a shift from their original stance that the proposals could not support any level of contributions.
- 1.7 Post deferral from the October Planning Committee, the applicant has provided some additional comments to support their case, which can be summarised as follows:
- Developer profit on private housing is, on average, 23% based on Gross Development Value (GDV), developer profit on affordable housing is less;
 - Developers must meet two financial tests to satisfy lending from banks, namely profit (on GDV) and Return on Capital Employed (ROCE).
 - ROCE is a measure of how profitable the development project is in relation to the funds invested in it;
 - An appropriate profit may be influenced by a number of factors; these include: Certainty of information to the valuer; risk; scale of development; level of financial exposure; and timescales;
 - With respect to Stourview Avenue, abnormal costs (as referred to above i.e. site levels, spring, drainage solution) mean that the risks are higher than average
 - For banks to reasonably lend to developers on a specific site, they will arguably expect a higher profit margin than normal. The applicant consider they have adopted a profit level reflecting a fairly low risk scheme at 20% of cost of the private units and 6% on affordable units. This figure is less than the 23% figure quoted above despite the high level of abnormal/unknown costs;
 - Finance is needed to cover the initial site purchase and cover the cost of development up until the project starts to turn a profit, when new homes are sold. This threshold is normally only crossed when selling the last phase of homes on the site;
 - If the bank believes that the financial risk is not matched by suitable profit, then the finance itself would not be available or at best, restrictively expensive;
 - Lending rates currently start at 8.5% on average and rise subject to perceived project or borrower risk; and
 - In conclusion, the applicant considers the proposed profit margin at Stourview Avenue to be 'particularly low' with financial lending a long way below current lending rates. Further, the profit level (at 16.67%) was accepted without comment by Council's own independent valuer, suggesting that such low margins represent a very lenient position by the developer.
- 1.8 To assist Members in their consideration of this case, it is important to note National Planning Policy Guidance with respect to Viability. The NPPF (2019) at paragraph 57 states:

“...The weight to be given to a viability assessment is a matter for the decision maker, having regard to all circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan [or in this case, since approval on outline planning permission in 2017] was brought into force.”

- 1.8 In support of the NPPF, the Government has produced complimentary national planning policy guidance which includes guidance on ‘Viability’. This guidance helpfully sets out advice on a ‘return to developers’ (profit) for the purpose of viability assessment. In this regard, the planning policy guidance includes the following guidance:
- It is the role of developers, not plan makers or decision makers, to mitigate potential risks to development;
 - The cost of fully complying with policy requirements should be accounted for in benchmark land value;
 - Under no circumstances will the price paid for land be relevant justification for failing to accord with relevant policies in the plan; and
 - For the purpose of plan making an assumption of 15-20% of gross development value (GDV) may be considered a suitable return to developers in order to establish the viability of plan policies [by inference, this could equally be applied to considering scheme viability through a planning application].
- 1.9 As stated above, the agreed Viability Assessment includes a projected developer profit level of 16.67%, which would allow for a financial contribution of £260K. At 16.67% profit, this sits at the lower end of the suggested 15-20% profit range contained in the national guidance and has been deemed acceptable by the Council’s independent valuer.
- 1.10 To further assist Members in their consideration of this case, officers have sought additional advice from our independent valuer in terms of a scenario where the developer profit is capped at 15% - the lowest level referred to in the national guidance on viability. The results of this further appraisal are that a 15% GDV would allow for a financial contribution of circa £544K. This would be nearer to the originally agreed S106 contributions (excluding affordable housing) but would remain below the level that would now be generated in association with the new application.
- 1.11 It must be borne in mind that the applicant has not agreed to the above re-run appraisal and the application before Members remains that which is reported above – namely a revised S106 planning obligation that makes provision in lieu payment of £260K which will need to include the RAMS payment (£8,805,60), together with the provision of on-site open space and its maintenance.
- 1.12 The planning merits of this case hinge on the relative weight that should be given to the need to provide housing in the District as set against the low level of contributions that will be provided to mitigate the impacts of the scheme in terms of addressing the additional demands on education and healthcare and the absence of any affordable housing provision.
- 1.13 On balance, officers remain content that, given the importance of maintaining housing land supply and the special circumstances of this case where viability

concerns have been proven and accepted by the Council's independent experts, the grant of planning permission with a revised S106 Agreement for a significantly reduced level of contribution to allow development to come forwards is acceptable in this case.

- 1.14 The recommendation is therefore to approve outline planning permission subject to the completion of a legal obligation under Section 106 of the Town and Country Planning Act 1990 and the imposition of the previous conditions.

Recommendation:

That the Head of Planning be authorised to grant planning permission for the development subject to:-

Within 6 (six) months of the date of the Committee's resolution to approve, the completion of a legal agreement under the provisions of section 106 of the Town and Country Planning Act 1990 dealing with the following matters (where relevant):

- **Provision and transference of on-site public open space;**
- **Financial contribution towards affordable housing;**
- **Financial Contribution towards RAMS**

Subject to the conditions stated in section 8.2.

And the the Head of Planning be authorised to refuse planning permission for the development if the legal agreement, as detailed above, is not completed with 6 months of the date of the Committee's resolution.

2. Planning Policy

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Tendring District Local Plan 2007

QL1 Spatial Strategy

QL2 Promoting Transport Choice

QL3 Minimising and Managing Flood Risk

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

HG1 Housing Provision

HG3 Residential Development within Defined Settlements

HG3A Mixed Communities

HG4 Affordable Housing in New Developments

HG6 Dwelling Size and Type

HG7 Residential Densities

HG9 Private Amenity Space

COM2 Community Safety

COM4 New Community Facilities (including Built Sports and Recreation Facilities)

COM6 Provision of Recreational Open Space for New Residential Development

COM21 Light Pollution

COM23 General Pollution

COM26 Contributions to Education Provision

EN1 Landscape Character

EN3 Coastal Protection Belt

EN4 Protection of the Best and Most Versatile Agricultural Land

EN5a Area proposed as an Extension to the Suffolk Coast and Heaths AONB

EN6 Biodiversity

EN6A Protected Species

EN6B Habitat Creation

EN11A Protection of International Sites European Sites and RAMSAR Sites

EN11B Protection of National Sites

EN11C Protection of Local Sites

EN12 Design and Access Statements

EN13 Sustainable Drainage Systems

EN29 Archaeology

TR1A Development Affecting Highways

TR2 Travel Plans

TR3A Provision for Walking

TR4 Safeguarding and Improving Public Rights of Way

TR5 Provision for Cycling

TR6 Provision for Public Transport Use

TR7 Vehicle Parking at New Development

Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017)

SP1 Managing Growth

SP2 Settlement Development Boundaries

SP3 Sustainable Design

SP5 Infrastructure & Connectivity

SP6 Place Shaping Principles

SPL1 Managing Growth

SPL2 Settlement Development Boundaries

SPL3 Sustainable Design

HP1 Improving Health and Wellbeing

HP2 Community Facilities

HP3 Green Infrastructure

HP5 Open Space, Sports & Recreation Facilities

LP1 Housing Supply

LP2 Housing Choice

LP3 Housing Density and Standards

LP4 Housing Layout

LP5 Affordable and Council Housing

PPL1 Development and Flood Risk

PPL3 The Rural Landscape

PPL4 Biodiversity and Geodiversity

PPL5 Water Conservation, Drainage and Sewerage

PPL7 Archaeology

CP1 Sustainable Transport and Accessibility

CP2 Improving the Transport Network

CP3 Improving the Telecommunications Network

Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

Essex Design Guide

Status of the Local Plan

- 2.1 The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF (2018) 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 48 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. As of 16th June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.
- 2.2 Section 1 of the Local Plan (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) was examined in January and May 2018 and the Inspector's initial findings were published in June 2018. They raise concerns, very specifically, about the three 'Garden Communities' proposed in north Essex along the A120 designed to deliver longer-term sustainable growth in the latter half of the plan period and beyond 2033. Further work has been required to address the Inspector's concerns and the North Essex Authorities are in the process of consulting on the additional work that has been carried out.
- 2.3 With more work required to demonstrate the soundness of the Local Plan, its policies cannot yet carry the full weight of adopted policy, however they can carry some weight in the determination of planning applications. The examination of Section 2 of the Local Plan will progress once matters in relation to Section 1 have been resolved. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 48 of the NPPF, they will be considered and, where appropriate, referred to in decision notices. In general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.
- 2.4 In relation to housing supply:

The NPPF 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 an appropriate buffer to ensure choice and competition in the market for land, account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible, or housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, paragraph 11 d) of the NPPF requires applications for housing development needing to be assessed on their merits, whether sites are allocated for development in the Local Plan or not. At the time of this decision, the supply of deliverable housing sites that the Council can demonstrate falls below 5 years and so the NPPF says that planning permission should be granted for development unless the

adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework as a whole. Determining planning applications therefore entails weighing up the various material considerations. The housing land supply shortfall is relatively modest when calculated using the standard method prescribed by the NPPF. In addition, the actual need for housing was found to be much less than the figure produced by the standard method when tested at the recent Examination In Public of the Local plan. Therefore, the justification for reducing the weight attributed to Local Plan policies is reduced as is the weight to be given to the delivery of new housing to help with the deficit.

3. **Relevant Planning History**

15/01810/OUT	Proposed new access road and the erection of up to 70 dwellings and associated works.	Approved	30.05.2017
18/00767/OUT	Proposed new access road and the erection of up to 72 dwellings and associated works	Current	

4. **Consultations**

Essex County Council Archaeology	A Heritage Statement has been submitted with the application which identifies the potential for the site to contain significant archaeological remains associated with the adjacent site where an important Roman site was revealed during excavation in advance of the Mistley River View Estate. Within the site itself an undated cropmark indicates historic activity and may be related to the Roman settlement and industrial activity along the waterfront. Condition requiring a programme of Archaeological evaluation is recommended.
ECC SuDS Consultee	Having reviewed the Flood Risk Assessment and the associated documents which accompanied the planning application, we do not object to the granting of planning permission based on the following conditions.
ECC Schools Service	<p>From the information received, the application is assessed on the basis of 72 houses all being 2 or more bedrooms. A development of this size can be expected to generate the need for up to 6.48 early years & childcare (EY&C), 21.6 primary school, and 14.4 secondary school places.</p> <p>Early Years and Childcare: There are only 2 childcare providers in the - 1 childminder and 1 after school club. The data shows after school vacancies but this will not meet our statutory duty to provide</p> <p>FEEE places, therefore I would like to request a contribution towards the development of new places. The proposed development is located within the Manningtree, Mistley, Little Bentley and Tendring ward. According to Essex County Council's childcare sufficiency data, published in July 2017 there are only 2 childcare providers in the - 1 childminder and 1 after</p>

school club. The data shows after school vacancies only and will not meet our statutory duty to provide FEEE places, therefore I would like to request a contribution towards the development of new places.

For Essex County Council to meet its statutory duties it must both facilitate sufficient places to meet free childcare entitlement demand and also ensure a diverse range of provision so that different needs can be met. Although there is some EY&C capacity in the area, the data shows insufficient provision to meet demand from this proposal. It is, thereby clear that an additional provision would be needed within the ward.

An additional 6.48 places would be provided at an estimated total cost of £112,895 at April 2018 prices. This equates to £17,422 per place and so, based on demand generated by this proposal set out above, a developer contribution of £112,895 index linked to April 2018, is sought to mitigate its impact on local EY&C provision.

Primary Education: This development sits within the priority admissions area of Mistley Norman Church of England Primary School which has capacity for 105 pupils. According to Essex County Council's document 'Commissioning School Places in Essex', the School is expected to be full by the academic year 2021/22. This document also forecasts, in the absence of action, a deficit of 46 primary school places across the Manningtree area (Tendring Group 6). In response, Essex County Council's '10 Year Plan' to meet the demand for school places alludes to the option of a one form entry expansion of Lawford Primary School for September 2020.

An additional 21.6 places would be provided at an estimated total cost of £330,070 at April 2018 prices. This equates to £15,281 per place and so, based on demand generated by this proposal set out above, a developer contribution of £330,070 index linked to April 2018, is sought to mitigate its impact on local primary provision.

Secondary Education: With regards to secondary education, the Priority Admissions Area School for the development would be Manningtree High School. The School is expecting a full intake this September and in subsequent years. According to the forecast in Commissioning School Places in Essex, a deficit of 61 places can be anticipated by 2021. The 10 Year Plan suggests Manningtree High could be expanded by at least one form of entry as early as September 2020.

An additional 14.4 places would be provided at an estimated total cost of £334,282 at April 2018 prices. This equates to £23,214 per place and so, based on demand generated by this proposal set out above, a developer contribution of £334,282, index linked to April 2018, is sought to mitigate its impact on local primary provision.

It is clear from the above data that additional school places will be needed. This development would add to that need and, thereby, the scope of projects to provide additional school places is directly related to the proposal. The contribution will thus be fairly and reasonably related in scale and kind to the development and, thereby, Community Infrastructure Levy regulation 122 compliant. Five obligations naming the project alluded to above have not been entered into at this time and any section 106 agreement in favour of education is, therefore, also regulation 123 compliant.

Having reviewed the proximity of the site to the nearest primary and secondary schools, Essex County Council will not be seeking a school transport contribution, however, the developer should ensure that safe direct walking and cycling routes to local schools are available.

In view of the above, I request on behalf of Essex County Council that if planning permission for this development is granted it should be subject to a section 106 agreement to mitigate its impact on EY&C, Primary and secondary Education, Standard formula s106 agreement clauses that ensure the contribution would be fairly and reasonably related in scale and kind to the development are available from Essex Legal Services.

If your council is minded to turn down the application, I would be grateful if the lack of surplus EY&C, Primary and secondary education provision, primary and secondary transport in the area to accommodate the proposed new homes can be noted as an additional reason for refusal, and that we are automatically consulted on any appeal or further application relating to the site.

Natural England

Thank you for your email on the above consultation, dated 10 September 2019 which was received by Natural England on the same day.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

This development site falls within the 'Zone of Influence' (Zol) of one or more of the European designated sites scoped into the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). Natural England has previously provided Tendring District Council with a suggested Habitats Regulation Assessment (HRA) Record template and associated guidance to help with this process where recreational disturbance to European sites is the sole HRA issue. Our reference for this earlier correspondence is 244199, dated 16th August 2018, with the template and guidance shown within APPENDIX 1.

I have included the template again with this letter as Appendix 1, as it also identified appropriate mitigation, and the conditions where Natural England should be consulted again, for example where the development site is adjacent to a European Sites.

Sites that have not been identified within the local authority housing allocation will not have been considered as part of the RAMS process and therefore require separate Habitat Regulation Assessment to determine whether adverse effects on the integrity of the internationally designated sites can be ruled out.

Developments that trigger the RAMS Impact Risk Zone (IRZ), may also trigger others relating to other aspects of Natural England's remit such as access, protected landscapes, designated sites, and protected species. In these instances Natural England should be consulted as normal.

In this particular case I note that Natural England only gave bespoke advice (our ref 247370 dated 14 June 2018) concerning adverse effects from the potential recreational disturbance on the integrity of the Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar site¹, the Essex Estuaries Special Area of Conservation (SAC) and the Colne Estuary SPA and Ramsar site. Consequently because of the introduction of the RAMS process, it seems appropriate to follow the RAMS guidance in this instance and to not consult Natural England on this case unless the proposal changes.

5. Representations

5.1 No representations have been submitted.

6. Assessment

6.1 The main considerations in this instance are;

- The Proposal;
- Principle of development;
- Any material changes since approval of the last application;
- Viability;
- Ecology;
- Open space;
- Potential layout, density and amenity;
- Impacts on Infrastructure/Affordable housing;
- Other material considerations; and,
- Overall planning balance.

Proposal

6.2 The proposal is largely the same as the previous application and seeks outline planning application with all matters reserved for the principle of up to 72 dwellings with a new access road off Stourview Avenue on the eastern part of the site. The proposal is not supported by any illustrative drawings, but it is intended as with the original application (as set out in the Design and Access Statement) that the main body of the site will contain the houses and the land to the east will accommodate the new access road which, itself, will connect the development from Stourview Avenue.

6.3 The main difference between the original planning application and the current one is the increase of 2 dwellings and the requirement for an amended S106 Agreement to reflect the changes now being put forward on viability grounds.

Principle of Residential Development

6.4 The principle of development of this site has already been established with the grant of planning permission 15/01810/OUT on 30 November 2015. The application has been submitted because the applicants consider that the previous application proposal would be unviable and have submitted a viability appraisal to support their contention. The current application is virtually identical in all other respects to the previous application but now seeks outline planning permission for up to 72 units instead of 70 as approved. The original 70 dwellings are included within the Council's five year supply trajectory and the site is included within the revised settlement development boundary in the emerging Local Plan.

6.5 Any material Changes since the grant of planning permission for the previous application.

6.6 The application site continues to fall within the Coastal Protection Belt as shown in the adopted Local Plan and therefore subject to Policy EN3 which states that new development which does not have a compelling functional need to be located in the Coastal Protection Belt will not be permitted.

6.7 The emerging Local Plan retains the Coastal Protection Belt designation but has rationalised the boundary and now excludes the application site. This was a factor in granting planning permission for the previous development and remains the same for the current application. It is considered that circumstances have not changed and that limited weight can continue to be afforded to the adopted Coastal Protection Belt policy due to the site characteristics which result in the site being relatively well contained by

landscaping and physical features so that views over the Estuary are very limited.

- 6.8 The application site also lies in the area proposed as an extension to the Suffolk Coast and Heaths Area of Outstanding Natural Beauty (AONB). Policy EN5a in the adopted Local Plan seeks to ensure that, in determining planning applications, the natural beauty of the landscape within the area, and views towards it are protected – having regard to the Suffolk Coast and Heaths Strategy.
- 6.9 However, that designation is not yet confirmed and the site currently remains outside the AONB. The Council's Principal Trees and Landscapes Officer has commented on this application and has confirmed that, taking into account the location and topography of the application site and surrounding land as well as the relatively limited and distance views of the site, as set out in the LVIA, he considers that the development would, visually, be relatively well assimilated into its setting.
- 6.10 Circumstances have not substantially changed since the determination of the previous application in respect of the designated AONB and the proposals remain acceptable when assessed against these matters

Viability

- 6.11 The principle change since the grant of planning permission has been that the applicants now submit that the scheme cannot be made viable if the infrastructure costs set out in the S106 Agreement continue to be required. That Agreement required contributions towards education, affordable housing, health and habitat as follows:
- Education Contribution: Primary School generator of £12,172.
Secondary School generator of £18,491.
 - Affordable housing: 5 dwellings for affordable rented housing.
 - Healthcare provision: £301.72 per dwelling
 - Habitat contribution: £3000.00
- 6.12 The S106 also requires the provision and transfer/management of the public open space.
- 6.13 The applicants have stated that after securing outline permission and upon working up detailed drawings, the scale of the technical costs of the site became apparent and have been found to be significant and threaten the commercial viability of the project. They have submitted that the additional costs derive largely from the following components of the scheme:
- There is relatively long access road required to access the site along which no units are proposed/ could be accommodated. Not only is such a road expensive, but it also means that the financial return from house sales happens at a later point than normal.
 - Where the access road crosses a spring, significant geotechnical design and construction work will be needed.
 - The route of the access road is parallel to the stream and is of suspect stability. This will require further investigation and design work to address. It will also require a retaining wall along its length to allow for the cross fall.
 - Where the road crosses the stream, a substantial culvert structure will be required.
 - Modelling of the stream needs to be undertaken to understand the flows.

- There are no straight-forward locations in which to site the attenuation basin. The best location in the north-east corner suffers from steep gradients. Slope stability will need to be adequately engineered to accommodate the basin.
 - Site levels mean that some parts of the site cannot be drained by gravity to the public sewer. A pumped solution will add cost to the project and is complicated by having to provide a deep chamber.
 - Retaining walls are required across the residential part of the site to deal with the challenging site levels.
 - Due to the proximity of the adjacent railway line, the project may need Network Rail sign-off and retained funds to underwrite development on the site.
 - Design fees are likely to be almost double the equivalent of similar sized project on level ground. Additional geotechnical fees associated with the access road would be in addition to this.
- 6.14 The applicants have argued that development of the site is unlikely to come forward and deliver housing and that the waiving of the requirements contained in the S106 is justified and essential.
- 6.15 The applicants have submitted a detailed viability assessment detailing the costs associated with the development. The Council has instructed independent viability consultants BNP Paribas Real Estate to assess the report and to advise the Council on the likely viability or otherwise of the scheme. The Council's consultants and the applicants have held long and detailed discussions regarding viability and BNP Paribas' final report has concluded that the scheme could be made viable but only with a considerably reduced level of infrastructure contribution. Initial conclusions in October 2018 indicated that the scheme might generate a larger surplus which could support 6 affordable units. However, the applicants submitted further information in respect of sales values, construction costs as well as abnormal costs. BNP Paribas have examined and tested these costs further and following further research have accepted that many of them are reasonable. They have therefore revised their assessment of the viability of the scheme and their final conclusion is that it will generate a surplus of only £0.26m when benchmarked against their agreed nominal site value. This means that the scheme can only support a payment in lieu of £0.26m instead of the infrastructure costs contained in the S106 as set out above.
- 6.16 The applicants have confirmed agreement to a payment of £0.26m in lieu of the costs set out in the S106 and have agreed that on this basis, the scheme could come forward and be viable.
- 6.17 The scheme would generate significantly lower contributions than are required to mitigate the impacts of the scheme and if approved, the development will generate additional demands on education and healthcare that cannot be addressed through infrastructure contributions. The development would also not provide any affordable housing, even the five units previously required, which was a level of provision significantly below the policy requirements set out in both the adopted and emerging local plans.
- 6.18 Your officers consider that the need to provide housing, both market and affordable housing, in the district continues to be important and the loss of this site for development would impact the Council's ability to continue to meet its five year housing requirement. The site is acceptable in all other respects subject to issues of ecology discussed below and it is considered that the special circumstances of this case where viability concerns have been proven and accepted by independent experts, justifies the grant of planning permission with a revised S106 Agreement for a significantly reduced level of contribution to allow development to come forward.

Ecology

- 6.19 Paragraph 170 of the NPPF requires that decisions should contribute to and enhance the natural and local environment. Where significant harm to biodiversity cannot be avoided, mitigated or, as a last resort, compensated for, Councils should refuse planning permission. Policy EN6 of the adopted Local Plan and Policy PPL4 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.
- 6.20 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 a site of international, national or local importance to nature conservation but the urban area of Manningtree, Lawford and Mistley abuts 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 more than 400 metres from the Stour Estuary and separated from it by the railway line which prevents any direct disturbance, it was considered that the development could result in potential indirect effects on the designated area. A habitat contribution of £3000 was therefore sought and agreed as part of the Section 106 for the previous application.
- 6.21 The applicants have updated their previous Habitat Regulation Assessment and Natural England was initially consulted on the proposals and raised an objection on potential impacts. However, during the course of the application Natural England introduced the RAMs process and guidance which meant that it is no longer necessary to consult with Natural England on this size of development. Natural England have therefore been re-consulted and have confirmed that because of the introduction of the of the RAMS process, it seems appropriate to follow the RAMS guidance in this instance and to not consult Natural England on this case unless the proposal changes. Their previous objection therefore no longer applies.
- 6.22 The proposals include land within the scheme for extensive on-site open space which can be conditioned. The surplus of £0.26m will contribute to the RAMs and in these circumstances it is considered that any impacts on designated sites can be adequately mitigated.
- 6.23 As before, the submitted Ecological Appraisal identifies potential on-site impacts in relation to bats, reptiles, invertebrates, breeding birds and badgers and a condition was attached to the original planning permission requiring an ecological plan to be agreed by the Council prior to the commencement of the development.
- 6.24 The RAMs contribution will be secured by Section 106 and it is proposed to retain the conditions of the earlier consent to deal with other matters of ecology and biodiversity.

Open Space

- 6.25 Policy COM6 in the adopted Local Plan and Policy HP3 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. This would necessitate an area of at least 0.5ha of the land being provided as green infrastructure. The applicants have advised that some 1.4ha will be provided and that the areas of open space are to coincide with areas of wildlife sensitivity and surface water attenuation ponds. Accordingly, they will be a mixture of play space with amenity

grass, wildlife areas and more formally planted areas. This space will allow for circular walks within the site and in doing so, reduce pressure on nearby wildlife areas. It will also function to offset and help mitigate the extra pedestrian traffic that nearby SSSI and SPA may experience and will incorporate much of the eastern parcel of land which is unsuitable for development. The detailed dimensions of the open space would be determined at reserved matters stage.

- 6.26 The current S106 allows for the transference of the on-site open space to Tendring District Council with a financial contribution towards maintenance but also contains provision for a management company to take over the future maintenance of the open space. It is considered that these provisions should be repeated in a revised S106 to allow for the District Council to acquire the land should it wish to and subject to a suitable maintenance contribution. If that is not forthcoming then the land would be maintained by the management company.

Potential Layout, Density and Amenity

- 6.27 The application remains in outline and whilst it has been amended to include a further 2 units, it is considered that the site is large enough to accommodate the additional dwellings without unacceptable impacts. The applicant has resubmitted their land use audit which shows that the eastern strip of land would accommodate the proposed access road together with the wildlife habitat areas and the SUDs. The 72 dwellings would be located in the wider western area on approximately 3 hectares. Boundary planting is shown on all sides which could provide a visual screen between the new and existing dwellings along Stourview Avenue and Seafeld Avenue.

- 6.28 Notice has been served on the District Council as Tendring District Council owns some of the land at Stourview Avenue that would be required to create the proposed access road. Negotiations on that matter would be outside the determination of this application and, as before, the Planning Committee should consider the current application on planning grounds, irrespective of any interest that the Council, as landowner, has in the site.

Impacts on Infrastructure/Affordable Housing

- 6.29 Education: Policy QL12 in the adopted Local Plan and Policy PP12 in the emerging Local Plan require that new development is supported by the necessary infrastructure which includes education provision. Essex County Council as the Local Education Authority has been consulted on the revised planning application.

- 6.30 ECC was satisfied with the original application that there would be sufficient provision of Early Years and Childcare facilities in the area to address the needs of the development but has now advised that a contribution towards additional provision is required for the current application and requests a contribution of £112,895. In terms of primary school provision, the site sits within the priority admissions area of Mistle Norman Church of England Primary School. This school is expected to be full by the academic year 2021/22 and ECC forecasts a deficit of 46 primary school places across the Manningtree area (Tendring Group 6). In response, Essex County Council's '10 Year Plan' to meet the demand for school places alludes to the option of a one form entry expansion of Lawford Primary School for September 2020. ECC consider that an additional 21.6 places would need to be provided at an estimated total cost of £330,070 at April 2018 prices.

- 6.31 With regards to secondary education, the Priority Admissions Area School for the development would be Manningtree High School which is also expected to be full both

in the current intake year and in future years. ECC calculate that the development will generate an additional 14.4 places and would require a contribution of £334,282 towards secondary education.

- 6.32 It is clear that additional school places will be needed as a result of this development but also that the availability of places and level of contributions have changed since the previous permission. No early years contribution was required with the 2015 planning permission and it is not considered that it would be justified to require a contribution at this stage. In terms of primary and secondary education, it is clear that the development will generate a need for additional places but these cannot be funded by the development. The extensive examination and discussions on the viability of the development has confirmed that it cannot proceed if the previous infrastructure costs are required. Whilst it is accepted that the development will place additional strain on education facilities, it is also considered that there continues to be a need for housing to come forward which this site will provide. This site is included within the settlement development boundary in the emerging Local Plan where development is acceptable and has already been agreed. However, the construction costs which were previously unknown, now mean that the site cannot contribute towards education costs if it is to be developed.
- 6.33 Health Provision: The previous application included a Healthcare contribution of £21,120 towards improvement of local surgeries. As previously outlined under Education, the current application will not be able to contribute towards these costs. There would be an inadequate surplus to fund this and other infrastructure costs.
- 6.34 Affordable housing: 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 LP5 in the emerging Local Plan, which is based on more up to date evidence on viability, requires 30% of new dwellings on large sites to be made available for affordable or 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 30% requirement. The Council accepted previously that the development should provide 5 properties to be 'gifted' to the Council (i.e. transferred to the Council or a nominated partner or trust at zero cost).
- 6.35 The Council's Housing Needs team has commented on the current application and advised that there is a high demand for housing in the Mistley area and that it would prefer to see affordable housing provided on site given the demand for housing in the area.
- 6.36 The applicants have argued that the development cannot support the provision of affordable housing on the site because of the high build costs. The Council's independent consultants have confirmed that development of the site will not be viable if affordable housing and the infrastructure costs continue to be required. As a consequence, a contribution towards affordable housing can be provided but this would be limited bearing in mind the agreed surplus of £0.26 million. It is considered however, that the surplus should be secured for affordable housing and the RAMS contribution so that the development can make some contribution to the provision of affordable housing as well as the market housing that will come forwards.

Other Material Considerations

- 6.37 Highways: The previous planning permission granted permission for the access which

was not a reserved matter. The access proposals for the current application are identical to those already approved and are therefore acceptable.

- 6.38 Drainage: the application is accompanied by a Flood Risk Assessment. Essex County Council as the authority for sustainable drainage has confirmed that it does not object to the application subject to conditions being attached. These conditions are included in the list of conditions below.

Financial Contribution – RAMS

- 6.39 Following Natural England's recent advice and the introduction of Zones of Influences around all European Designated Sites (i.e. Ramsar, Special Protection Areas and Special Area of Conservation); within Zones of Influences (which the site falls within) Natural England are requesting financial contributions to mitigate against any recreational impact from new dwellings.
- 6.40 Legal advice has been sought in relation to the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) which supports the view that Tendring District Council can seek financial contributions in accordance with the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). A Habitat Regulations Assessment has therefore been undertaken to confirm that the mitigation will be a proportionate financial contribution as recommended by Natural England. It is therefore considered that this contribution is sufficient to mitigate against any adverse impact the proposal may have on European Designated Sites.
- 6.41 A unilateral undertaking is currently being prepared to secure this legal obligation and to ensure that the development would not adversely affect the integrity of European Designated Sites in accordance with policies EN6 and EN11a of the Saved Tendring District Local Plan 2007, Policy PPL4 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

7. Conclusion

- 7.1 The principle of development of this site has already been established by the grant of planning permission 15/01810/OUT in November 2015. The current application is for virtually the same development as before but has increased the number of dwellings marginally from 70 to 72. Currently, the Council is not able to demonstrate a 5 year supply of housing land under the Standard Method and, as a consequence, the National Planning Policy Framework (NPPF) requires that development be approved unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits or the application of specific policies within the framework that protect areas of particular importance provide a clear reason for refusal.
- 7.2 In this instance, development of this site has the potential to result in adverse effects on the integrity of the Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar, the Essex Estuaries Special Area of Conservation (SAC) and the Colne Estuary SPA and Ramsar site. Paragraph 175 of the NPPF confirms that when determining applications, local planning authorities should refuse development if significant harm to biodiversity cannot be avoided, adequately mitigated or, as a last resort, compensated. The current proposals would provide an extensive area of on-site open space which, subject to design, would help to mitigate effects through the provision of site walks, dog walking and bins etc. Furthermore, there would be sufficient money generated by the development to contribute to RAMs to allow mitigation off site. In these circumstances, it is considered that any potential adverse

impacts can be adequately mitigated and therefore would not be contrary to Paragraph 175 of the NPPF.

- 7.3 The issue therefore remains whether the development can be considered to be acceptable if it cannot mitigate the impacts that it will have on local infrastructure. The applicants have submitted that development of this site cannot be made viable if the terms of the previous S106 Agreement are adhered to. This is largely due to the scale of the technical costs of developing the site. Your officers have been advised by independent consultants that, when taken into account, these costs reduce the viability of the scheme to the extent that only a small surplus would be generated to fund the infrastructure requirements. The surplus of £0.26m is not sufficient to provide affordable housing, or to fund the education and healthcare contributions and therefore the development will not be able to mitigate its impacts in these respects.
- 7.4 The application site is located within the proposed settlement development envelop for Mistley defined in the emerging Local Plan and the current proposal would bring about the construction of 72 market houses and therefore contribute to and help boost the supply of housing in the district in line with the requirements of the NPPF. The site is constrained by existing residential development and the railway line and it is considered that its development for residential purposes continues to be acceptable and would provide a more acceptable form of development than other potential uses. It is considered, on balance, that the adverse impacts do not significantly and demonstrably outweigh the benefits of bring forward residential development on this site and the application is therefore recommended for approval subject to a revised s106 legal agreement that requires the provision of the RAMs and the on-site public open space together with the balance of the £0.26m to be as a contribution towards the provision of affordable housing. The conditions of the previous planning permission are recommended to be brought forward.

8. Recommendation

- 8.1 The Planning Committee is recommended to grant planning permission subject to the following conditions and informatives and the prior completion of a section106 legal agreement with the agreed Heads of Terms, as set out in the table below:

CATEGORY	TERMS
Provision and transference of on-site public open space; Financial contribution towards affordable housing; Financial contribution towards RAMS	£122.30 per dwelling
Total	Not to exceed £250,000

As established through the granting of outline application 15/01810/OUT, the principle of residential development on this site is acceptable and the application is recommended for approval. The conditions reflect those of the original planning permission.

8.2 Conditions

- 1 The approval of Reserved Matters must be submitted before the expiration of three years from the date of this permission.

Reason - To comply with the requirements of Section 92 of the Town and Country Planning Act 1990.

- 2 The development hereby permitted shall be begun before the expiration of two years from date of approval of the last of the Reserved Matters to be approved.

Reason - To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 3 No development shall be commenced until plans and particulars of "the reserved matters" referred to in the following conditions relating to appearance, layout, scale and landscaping have been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason - The application as submitted does not provide sufficient particulars for consideration of these details.

- 4 No development shall commence until a Layout and Phasing Plan identifying details of the various elements of the development and the timing of their commencement; construction; provision; installation or occurrence has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the details of the Layout and Phasing Plan as approved, unless otherwise previously agreed in writing with the Local Planning Authority.

Reason - To ensure that the scheme is brought forward in a timely and comprehensive manner in the interests of proper planning; highway safety; amenity and the character and appearance of the area and to ensure a satisfactory relationship between the various components of the development and adjoining land.

- 5 The maximum number of dwellings to be contained in the development shall be up to (but no more than) 72 dwellings.

Reason - For the avoidance of doubt and in the interests of proper planning.

- 6 Prior to commencement of the development a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Construction Management Plan shall include but not be limited to the following:

- Safe access to/from the site;
- The parking of vehicles of site operatives and visitors;
- The loading and unloading of plant and materials;
- The storage of plant and materials used in constructing the development;
 - The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- Wheel washing facilities;
- Measures to control the emission of dust and dirt during construction;
- A scheme for recycling/disposing of waste resulting from construction works.

- Details of hours of site clearance or construction
- A scheme to control noise and vibration during the construction phase, including details of any piling operations
- Provision of a dedicated telephone number(s) for members of the public to raise concerns/complaints, and a strategy for pre-warning residents of noisy activities/sensitive working hours.
- A scheme to minimise the risk of off-site flooding caused by surface water run-off and groundwater during construction works and prevent pollution.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

Reason - To protect highway efficiency of movement and safety.

7 No occupation of any dwelling shall take place until the following have been provided or completed:

- a) A priority junction off Stourview Avenue to provide access to the proposal site as shown in principle on planning application drawing number 10831/HW1
- b) Upgrading of the two bus stops in Harwich Road in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority
- c) A minimum 2 metre wide footway along the eastern side of the Stourview Avenue carriageway between the proposal site access and Harwich Road with dropped kerbs/tactile paving crossing points in Stourview Avenue immediately north of its junction with Harwich Road as shown in principle on planning application drawing number 10831/HW1 and in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority
- d) Residential Travel Information Packs

Reason - To protect highway efficiency of movement and safety and to ensure the proposal site is accessible by more sustainable modes of transport such as public transport, cycling and walking.

8 A. No development or preliminary ground-works shall 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 in writing by the Local Planning Authority. Following the completion of this initial phase of archaeological work, a summary report shall be prepared and a mitigation strategy detailing the approach to further archaeological excavation and/or preservation in situ through re-design of the development, shall be submitted to and approved in writing by the Local Planning Authority.

B. No development or preliminary groundwork shall commence on those areas of the development site containing archaeological deposits, until the satisfactory completion of archaeological fieldwork, as detailed in the mitigation strategy as approved.

C. Following completion of the archaeological fieldwork, the applicant shall submit to the Local Planning Authority a post-excavation assessment (within six months of the completion date, unless otherwise agreed in advance with the Local 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.

Reason - The proposed development is located within an area with potential for below ground archaeological deposits. The development would result in harm to non-designated heritage assets with archaeological interest.

- 9 No phase of development shall commence until an Ecological Mitigation Scheme and Management/Enhancement Plan has been submitted to and approved, in writing, by the Local Planning Authority. The document shall include:
- i) the recommendations contained with the Ecological Assessment (Geosphere Environmental Ltd dated 26 March 2018)
 - ii) details of how biodiversity within the site will be encouraged and maintained by the development.

Reason - In order to safeguard protected wildlife species and their habitats and in the interests of biodiversity.

- 10 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.

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

- 11 No defined phase of the approved development shall take place until a detailed surface water drainage scheme for that phase, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. Each phase of the surface water drainage scheme shall subsequently be implemented prior to occupation of any dwelling of that phase and should include but not be limited to:

- 1) Verification of the suitability of infiltration of surface water for the development. This should be based on infiltration tests that have been undertaken in accordance with BRE 365 testing procedure and the infiltration testing methods found in chapter 25.3 of The CIRIA SuDS Manual C753.
- 2) Limiting discharge rates to 2.1l/s for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change.
- 3) Provide sufficient storage to ensure no off site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event.
- 4) Demonstrate that all storage features can half empty within 24 hours for the 1:100 plus 40% climate change critical storm event.
- 5) Final modelling and calculations for all areas of the drainage system.
- 6) The appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753.
- 7) Detailed engineering drawings of each component of the drainage scheme.
- 8) A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
- 9) A written report summarising the final strategy and highlighting any minor changes to the approved strategy.

It should be noted that all outline applications are subject to the most up to date design criteria held by the LLFA.

Reason - To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site, to ensure the effective operation of SuDS features over the lifetime of the development and to provide mitigation of any environmental harm which may be caused to the local water environment.

- 12 No works shall take place until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works and prevent pollution has been submitted to, and approved in writing by, the local planning authority. The scheme shall subsequently be implemented as approved.

Reason - The National Planning Policy Framework paragraph 163 and paragraph 170 state that local planning authorities should ensure development does not increase flood risk elsewhere and does not contribute to water pollution.

- 13 Prior to occupation a maintenance plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and agreed, in writing, by the Local Planning Authority.

Should any part be maintainable by a maintenance company, details of long term funding arrangements should be provided.

Reason - To ensure appropriate maintenance arrangements are put in place to enable the surface water drainage system to function as intended to ensure mitigation against flood risk.

- 14 The applicant or any successor in title must maintain yearly logs of maintenance which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon a request by the Local Planning Authority.

Reason - To ensure the SuDS are maintained for the lifetime of the development as outlined in any approved Maintenance Plan so that they continue to function as intended to ensure mitigation against flood risk.

- 15 No development shall commence until there has been submitted to and approved, in writing, by the Local Planning Authority a scheme of hard and soft landscaping works for the site, which shall include any proposed changes in ground levels and also accurately identify spread, girth and species of all existing trees, shrubs and hedgerows on the site and indicate any to be retained, together with measures for their protection which shall comply with the recommendations set out in the British Standards Institute publication "BS 5837: 2012 Trees in relation to design, demolition and construction."

Reason - In the interest of visual amenity and the character of the area.

- 16 All changes in ground levels in relation to the soft landscaping, hard landscaping, planting, seeding or turfing shown on the approved landscaping details shall be carried out during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be agreed in writing by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or

seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees in writing to a variation of the previously approved details.

Reason - To ensure that the development provides a satisfactory setting, in the interests of the character and appearance of the landscape and the visual amenity of the site.

- 17 No construction of any dwelling shall commence until precise details of lighting of communal areas, refuse storage/collection points and the manufacturer and types and colours of the external facing and roofing materials to be used in the construction have been submitted to and approved, in writing, by the Local Planning Authority. Such lighting, refuse points and materials so approved shall be those used in the development.

Reason - To ensure a satisfactory development in relation to external appearance.

- 18 Within the hereby permitted development, no dwelling shall be occupied until a high-speed broadband connection is installed utilising resistant tubing to that dwelling. All in accordance with details that shall be submitted to and approved, in writing, by the Local Planning Authority. If the applicant is unable to achieve this standard of connection, and can evidence through consultation that this would not be possible, practical or economically viable an alternative superfast (i.e. will provide speeds greater than 24mbps) wireless service will be considered acceptable.

Reason - To ensure the development is able to be equipped with high speed broadband to enable opportunities for web-based communication and homeworking.

- 19 Prior to commencement of development the applicants shall submit to the Local Planning Authority, in writing, a Local Recruitment Strategy to include details of how the applicant/ developer shall use their reasonable endeavours to promote and encourage the recruitment of employees and other staff in the locality of the application site, for the construction of the development. The approved Local Recruitment Strategy shall be adhered to therein after .

Reason - To promote and encourage the recruitment of employees and other staff in the locality of the application site.

8.3 **Informatives**

Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

Legal Agreement Informative

This application is the subject of a legal agreement and this decision should only be read in conjunction with this agreement. The agreement addresses the following issues: contribution towards affordable housing, the provision, transference and

maintenance of the public open space, the mitigation against any recreational impact from residential developments in accordance with Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

Highways Informatives

Informative 1: On the completion of the Development, all roads, footways/paths, cycle ways, covers, gratings, fences, barriers, grass verges, trees, and any other street furniture within the Site and in the area it covers and any neighbouring areas affected by it, must be left in a fully functional repaired/renovated state to a standard accepted by the appropriate statutory authority.

Informative 2: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org or by post to:

SMO1 – Essex Highways
Colchester Highways Depot,
653 The Crescent,
Colchester
CO4 9YQ

The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

Building Regulations Informative

The designer should ensure that the means of escape meet BS5588-1:1990.

9. Additional Considerations

Public Sector Equality Duty (PSED)

- 9.1 In making your decision you must have regard to the PSED under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions to:
- 9.2 A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- 9.3 B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s); and
- 9.4 C. Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.

- 9.5 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, being married or in a civil partnership, race including colour, nationality and ethnic or national origin, religion or belief, sex and sexual orientation.
- 9.6 The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in section 149 and section 149 is only one factor that needs to be considered, and may be balanced against other relevant factors.
- 9.7 It is considered that the recommendation to grant permission in this case would not have a disproportionately adverse impact on a protected characteristic.

Human Rights

- 9.8 In making your decision, you should be aware of and take into account any implications that may arise from the Human Rights Act 1998 (as amended). Under the Act, it is unlawful for a public authority such as the Tendring District Council to act in a manner that is incompatible with the European Convention on Human Rights.
- 9.9 You are referred specifically to Article 8 (right to respect for private and family life), Article 1 of the First Protocol (protection of property) and Article 14 (right to freedom from discrimination).
- 9.10 It is not considered that the recommendation to grant permission in this case interferes with local residents' right to respect for their private and family life, home and correspondence or freedom from discrimination except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation to grant permission is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

Finance Implications

- 9.11 Local finance considerations are a matter to which local planning authorities are to have regard in determining planning applications, as far as they are material to the application.
- 9.12 The New Homes Bonus (NHB) is one local finance consideration capable of being a material consideration to which the weight given shall be determined by the decision maker. The NHB is a payment to local authorities to match the Council Tax of net new dwellings built, paid by Central Government over six consecutive years. In this instance, it is not considered to have any significant weight attached to it that would outweigh the other considerations.

10. Background Papers

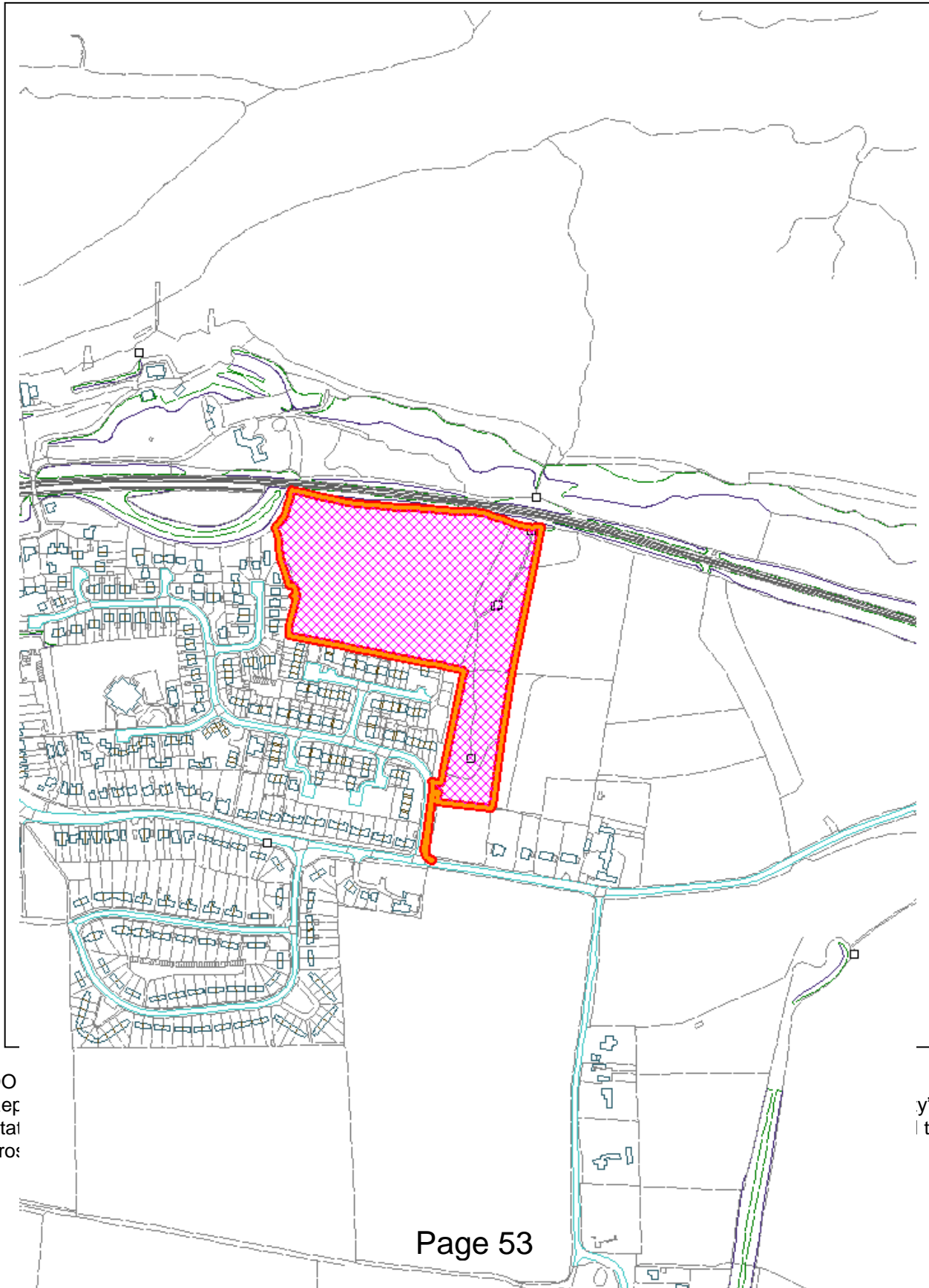
Committee report for application Ref: 15/01810/OUT.

PLANNING COMMITTEE

30TH NOVEMBER 2016

REPORT OF THE HEAD OF PLANNING

A.3 PLANNING APPLICATION – 15/01810/OUT – LAND NORTH OF STOURVIEW AVENUE MISTLEY CO11 1LT



Application:	15/01810/OUT	Town / Parish: Mistley
Applicant:	Rose Builders (Properties Ltd)	
Address:	Land north of Stourview Avenue, Mistley, CO11 1LT	
Development:	Proposed new access road and the erection of up to 70 dwellings and associated works.	

1. Executive Summary

- 1.1 This is an outline planning application seeking approval for the principle of up to 70 new homes with a new access road on undeveloped land off Stourview Avenue, Mistley. The application was submitted in November 2015 but determination has been delayed whilst additional information has been prepared to address the requirements of European Habitat Regulations, assess the ecological value of the site and whilst the cumulative impacts of other large-scale development proposals in the Manningtree, Lawford and Mistley area have been properly assessed. Around 1,500 new homes are already expected to be built in the Manningtree, Lawford, Mistley and Brantham area following resolution to grant planning permission for a number of major schemes, subject to s106 legal agreements to provide appropriate mitigation for the individual and cumulative impacts on health, education and highways.
- 1.2 Historically, this site was Mistley Parish Council's preferred location for inclusion in the new Local Plan for housing. However, following the grant of outline planning permission for schemes of up to 300 dwellings off Long Road, 135 dwellings off Harwich Road and 25 dwellings off Pound Corner, and having considered concerns raised by residents, development on the application site is no longer supported by the Parish Council. There are also 9 local objections and 1 representation of support.
- 1.3 The site is located within an area proposed for inclusion within an extension to the Suffolk Coast and Heaths Area of Outstanding Natural Beauty. It also lies outside of the settlement development boundary and within the Coastal Protection Belt, as defined in the Council's adopted Local Plan. In the new merging Local Plan however, the settlement development boundary extends around the majority of the site and the Coastal Protection Belt has been adjusted to exclude the land in question – indicating an expectation that the site could be developed. The site's location close to the Stour Estuary and associated Area of Outstanding Natural Beauty does however mean that any development would have to be undertaken in a sensitive manner that respects landscape and visual considerations and the natural beauty of the area.
- 1.4 Because the Council is still currently unable to identify a five-year supply of deliverable housing sites as required by government planning policy (albeit the situation is improving rapidly), this application has been considered in line with the government's 'presumption in favour of sustainable development'. Although the development would be contrary to the adopted Local Plan, to comply with government requirements Officers have needed to approach the application with a view to positively addressing, as far as possible, technical issues and other matters raised by consultees and residents.
- 1.5 Because Mistley forms part of the wider Manningtree, Lawford and Mistley urban settlement as defined in the Local Plan, residential development in this location has the potential to be sustainable with reasonable access to a range of local job opportunities, shops, services, facilities and public transport compared with more remote rural villages.

- 1.6 With a number of major developments already approved in the area, Officers have carefully considered both the individual and cumulative impacts to assist the Committee in making an informed judgement. The most significant planning issue in this regard has been Highways and the potential impact of multiple developments on highway capacity and safety, in particular the A137 at the busy railway crossing at Manningtree Station. Following lengthy and careful consideration, Essex County Council as the Highways Authority has advised that this particular development will not add significantly to traffic at the railway crossing and that it is acceptable in highways terms, subject to conditions relating mainly to the access and footpath arrangements.
- 1.7 Essex County Council as the Education Authority and NHS England have requested financial contributions towards addressing the impact of the development on local education and health services and Anglian Water has indicated that the development could be accommodated by the local sewage system. Ecological, flood risk and heritage impacts have been addressed to the satisfaction Officers. Whilst no indicative drawings have been provided in support of the application at this stage, Officers are content that a scheme of 70 dwellings with suitable open space and landscaping could be accommodated on the site in an acceptable manner – with the details of layout and design being reserved for consideration at a later stage.
- 1.8 Officers consider that this development complies with the requirements of the National Planning Policy Framework and the recommendation is approval subject to a s106 agreement to secure affordable housing, open space and allotments, and financial contributions towards health and education.

Recommendation: Approval

That the Head of Planning be authorised to grant planning permission for the development subject to:-

- a) Within 6 (six) months of the date of the Committee's resolution to approve, the completion of a legal agreement under the provisions of section 106 of the Town and Country Planning Act 1990 dealing with the following matters (where relevant):
- On-site Council Housing/Affordable Housing;
 - Education contribution;
 - Health contribution;
 - Contribution towards ecological mitigation; and
 - Completion and transfer of public open space + maintenance contribution.
- b) Planning conditions in accordance with those set out in (i) below (but with such amendments and additions, if any, to the detailed wording thereof as the Head of Planning (or the equivalent authorised officer) in their discretion considers appropriate).
- (i) Conditions:**
1. Standard 3 year time limit for submission of reserved matters application.
 2. Standard 2 year limit for commencement of development following approval of reserved matters.
 3. Details of appearance, layout, scale and landscaping (the reserved matters).
 4. Layout and phasing plan/programme.
 5. Development to contain up to (but no more than) 70 dwellings.
 6. Highways conditions (as recommended by the Highway Authority).
 7. Archeologic trial trenching.

8. Ecological mitigation/enhancement plan.
9. Foul water strategy.
10. Surface water drainage scheme.
11. SuDS maintenance/monitoring plan.
12. Hard and soft landscaping plan/implementation.
13. Details of lighting, materials and refuse storage/collection points.
14. Broadband connection.
15. Local employment arrangements.

- c) That the Head of Planning (or the equivalent authorised officer) be authorised to refuse planning permission in the event that such legal agreement has not been completed within the period of 6 (six) months, as the requirements necessary to make the development acceptable in planning terms had not been secured through a s106 planning obligation.

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.
- 2.5 Paragraph 187 of the NPPF states "*Local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should*

work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area”.

Local Plan

- 2.6 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: Directs most new development toward urban areas and seeks to concentrate development within settlement development boundaries.

QL2: Promoting Transport Choice: Requires developments to be located and designed to avoid reliance on the use of the private car.

QL3: Minimising and Managing Flood Risk: Seeks to direct development away from land at a high risk of flooding and requires a Flood Risk Assessment for developments in Flood Zone 1 on sites of 1 hectare or more.

QL9: Design of New Development: Provides general criteria against which the design of new development will be judged.

QL10: Designing New Development to Meet Functional Needs: Requires development to meet functional requirements relating to access, community safety and infrastructure provision.

QL11: Environmental Impacts: Requires new development to be compatible with its surrounding land uses and to minimise adverse environmental impacts.

QL12: Planning Obligations: States that the Council will use planning obligations to secure infrastructure to make developments acceptable, amongst other things.

HG1: Housing Provision

Sets out the strategy for delivering new homes to meet the need up to 2011 (which is now out of date and needs replacing through the new Local Plan).

HG3: Residential Development Within Defined Settlements

Supports appropriate residential developments within the settlement development boundaries of the district’s towns and villages.

HG3a: Mixed Communities

Promotes a mix of housing types, sizes and tenures to meet the needs of all sectors of housing demand.

HG4: Affordable Housing in New Developments

Seeks up to 40% of dwellings on large housing sites to be secured as affordable housing for people who are unable to afford to buy or rent market housing.

HG6: Dwellings Size and Type

Requires a mix of housing types, sizes and tenures on developments of 10 or more dwellings.

HG7: Residential Densities

Requires residential developments to achieve an appropriate density. This policy refers to minimum densities from government guidance that have long since been superseded by the NPPF.

HG9: Private Amenity Space

Requires a minimum level of private amenity space (garden space) for new homes depending on how many bedrooms they have.

COM2: Community Safety

Requires developments to contribute toward a safe and secure environment and minimise the opportunities for crime and anti-social behaviour.

COM4: New Community Facilities (including Built Sports and Recreation Facilities)

Supports the creation of new community facilities where they are acceptable in terms of accessibility to local people, impact on local character, parking and traffic and other planning considerations.

COM6: Provision of Recreational Open Space for New Residential Developments

Requires residential developments on sites of 1.5 hectares or more to provide 10% of the site area as public open space.

COM21: Light Pollution

Requires external lighting for new development to avoid unacceptable impacts on the landscape, wildlife or highway and pedestrian safety.

COM23: General Pollution

States that permission will be refused for developments that have a significant adverse effect through the release of pollutants.

COM26: Contributions to Education Provision

Requires residential developments of 12 or more dwellings to make a financial contribution, if necessary, toward the provision of additional school places.

COM29: Utilities

Seeks to ensure that new development on large sites is or can be supported by the necessary infrastructure.

COM31a: Sewerage and Sewage Disposal

Seeks to ensure that new development is able to deal with waste water and effluent.

EN1: Landscape Character

Requires new developments to conserve key features of the landscape that contribute toward local distinctiveness.

EN3: Coastal Protection Belt

Resists development in the Coastal Protection Belt to safeguard the character of the undeveloped coast.

EN4: Protection of the Best and Most Versatile Agricultural Land

Seeks to ensure that where agricultural land is needed for development, poorer quality land is used as priority over higher quality land.

EN5a: Area proposed as an Extension to the Suffolk Coast and Heaths AONB

In this area, the Council will seek to protect the natural beauty of the landscape and views towards it, having regard to the Suffolk Coast and Heaths Strategy.

EN6: Biodiversity

Requires existing biodiversity and geodiversity to be protected and enhanced with compensation measures put in place where development will cause harm.

EN6a: Protected Species

Ensures protected species including badgers are not adversely impacted by new development.

EN6b: Habitat Creation

Encourages the creation of new wildlife habitats in new developments, subject to suitable management arrangements and public access.

EN11a: Protection of International Sites

Guards against development that would have an adverse impact on wildlife habitats of international importance which includes the Stour Estuary.

EN11b: Protection of National Sites

Guards against development that would have an adverse impact on wildlife habitats of national importance such as Sites of Scientific Interest (SSSI) and National Nature Reserves (NNR).

EN11c: Protection of Local Sites

Guards against development that would have an adverse impact on wildlife habitats of local importance including Local Wildlife Sites (LoWS).

EN12: Design and Access Statements

Requires Design and Access Statements to be submitted with most planning applications.

EN13: Sustainable Drainage Systems

Requires developments to incorporate sustainable drainage systems to manage surface water run-off.

EN29: Archaeology

Requires the archaeological value of a location to be assessed, recorded and, if necessary, safeguarded when considering development proposals.

TR1a: Development Affecting Highways

Requires developments affecting highways to aim to reduce and prevent hazards and inconvenience to traffic.

TR3a: Provision for Walking

Seeks to maximise opportunities to link development with existing footpaths and rights of way and provide convenient, safe attractive and direct routes for walking.

TR4: Safeguarding and Improving Public Rights of Way

Encourages opportunities to expand the public right of way network. Requires that developments affecting an existing public right of way accommodate the definitive alignment of the path or, where necessary, seek a formal diversion.

TR5: Provision for Cycling

Requires all major developments to provide appropriate facilities for cyclists.

TR6: Provision for Public Transport Use

Requires developments to make provision for bus and/or rail where transport assessment identifies a need.

TR7: Vehicle Parking at New Development

Refers to the adopted Essex County Council parking standards which will be applied to all non-residential development.

Tendring District Local Plan 2013-2033 and Beyond: Preferred Options Consultation Document (Published July 2016)

Relevant policies include:

SP1: Presumption in Favour of Sustainable Development

Follows the Planning Inspectorate's standard wording to ensure compliance with the NPPF.

SP4: Infrastructure and Connectivity

Requires the provision of infrastructure, services and facilities that are identified to serve the needs arising from new development.

SP5: Place Shaping Principles

Requires the highest standards of built and urban design and sets out the key principles that will apply to all new developments.

SPL1: Managing Growth

Identifies Manningtree, Lawford and Mistley as a 'smaller urban settlement' within a hierarchy of settlements designed to direct future growth to the most sustainable locations.

SPL2: Settlement Development Boundaries

Seeks to direct new development to sites within settlement development boundaries.

SPL3: Sustainable Design

Sets out the criteria against which the design of new development will be judged.

HP1: Improving Health and Wellbeing

Requires a Health Impact Assessment on all development sites deliver 50 or more dwellings and financial contributions towards new or enhanced health facilities where new housing development would result in a shortfall or worsening of health provision.

HP4: Open Space, Sports and Recreation Facilities

Requires new developments to contribute to the district's provision of playing pitches and outdoor sports facilities and also requires larger residential developments to provide land as open space with financial contributions toward off-site provision required from smaller sites.

LP1: Housing Supply

Sets out the broad location of where new housing is proposed to be built to over the next 15-20 years to meet objectively assessed needs.

LP2: Housing Choice

Promotes a range of house size, type and tenure on large housing developments to reflect the projected needs of the housing market.

LP3: Housing Density

Policy requires the density of new housing development to reflect accessibility to local services, minimum floor space requirements, the need for a mix of housing, the character of surrounding development and on-site infrastructure requirements.

LP4: Housing Layout

Policy seeks to ensure large housing developments achieve a layout that, amongst other requirements, promotes health and wellbeing; minimises opportunities for crime and anti-social behaviour; ensures safe movement for large vehicles including emergency services and waste collection; and ensures sufficient off-street parking.

LP5: Affordable and Council Housing

Requires up to 30% of new homes on large development sites to be made available to the Council or a nominated partner, at a discounted price, for use as Affordable Housing or Council Housing.

PP12: Improving Education and Skills

Requires the impacts of development on education provision to be addressed at a developer's costs and also requires applicants to enter into an Employment and Skills Charter or Local Labour Agreement to ensure local contractors are employed to implement the development and that any temporary or permanent employment vacancies (including apprenticeships) are advertised through agreed channels.

PPL1: Development and Flood Risk

Seeks to direct development away from land at a high risk of flooding and requires a Flood Risk Assessment for developments in Flood Zone 1 on sites of 1 hectare or more.

PPL3: The Rural Landscape

Requires developments to conserve, where possible, key features that contribute toward the local distinctiveness of the landscape and include suitable measures for landscape conservation and enhancement.

PPL4: Biodiversity and Geodiversity

Requires existing biodiversity and geodiversity to be protected and enhanced with compensation measures put in place where development will cause harm.

PPL5: Water Conservation, Drainage and Sewerage

Requires developments to incorporate sustainable drainage systems to manage surface water run-off and ensure that new development is able to deal with waste water and effluent.

PPL7: Archaeology

Where developments might affect archaeological remains, this policy requires proper surveys, investigation and recording to be undertaken.

CP1: Sustainable Transport and Accessibility

Requires the transport implications of development to be considered and appropriately addressed.

CP3: Improving the Telecommunications Network

Requires new development to be served by a superfast broadband (fibre optic) connection installed on an open access basis and that can be directly accessed from the nearest British Telecom exchange and threaded through resistant tubing to enable easy access for future repair, replacement or upgrading.

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 Building Control Unable to comment at this time due to a lack of design drawings.

TDC Principal Tree & Landscape Officer
The application site is situated the Stour Valley System Landscape Character Area (LCA) directly adjacent to the northernmost part of the Bromley Heathland Plateau LCA as defined in the Tendring District Council Landscape Character Assessment . One of the key characteristics of the Stour valley System is; as defined in the document the southern slopes and scenic tributary valleys of the Stour, form a setting to one of the most important wildlife estuaries in Europe and a setting to the Suffolk Coast and Heaths AONB. It is therefore vitally important that planning permission is not granted unless it can be demonstrated that significant harm will not be caused to either the scenic beauty or wildlife value of the area.

The companion document for the above Landscape Character Assessment entitled Guidance for the Built Environment emphasises the importance of protecting the landscape for its value the rural backdrop and setting for the Suffolk Coast and Heaths AONB.

In order to show the condition of the trees on the land and to ascertain the extent of the constraint that they are development potential of the application site the applicant has submitted a detailed tree survey and report. The information provided is in accordance with BS5837: 2012 Trees in relation to design, demolition and construction. Recommendations.

In the main the tree report accurately describes the health and condition of the trees although it does not identify those that may be at risk as a result of the development proposal as the application is in outline form and no indicative layout or zoning information has been provided.

In addition to this there appear to be trees in the north eastern corner (to the north of T4) that have not been included in the report.

To enable an assessment of the impact of the development proposal on the trees on the land to be made it will be necessary for the applicant to provide a zoning plan showing areas allocated for housing, open spaces and soft landscaping. This information should be provided prior to the determination of the application.

The application site comprises two fields divided by a scrubby hedgerow and watercourse running south to north towards the Stour Estuary. Both appear to be in agricultural use. There are no trees in the main body of the land to the west of the hedgerow adjacent to the watercourse although there are established trees, scrubby growth and hedgerows on the perimeter of this part of the site. On the part of the application site to the east of the watercourse and extending from Harwich Road to the railway track there are several trees with reasonable visual amenity value.

Without details of the proposed layout for the development proposals it is not possible to determine whether or not vegetation would be removed in order for the development to take place.

It would be reasonable, however, to assume that development could occur, on the treeless part of the land that would incorporate the retention of the perimeter trees and hedgerows as well as making provision for new planting. From the information made available by the applicant it is not possible to establish the degree to which development on this part of the land would cause harm to the appearance of the area.

In terms of the impact of the development proposal on the local landscape character it is important to recognise that the land in question is situated close to the Suffolk Coast and Heaths Area of Outstanding Natural Beauty (SC&H - AONB) and is included in the wider project area.

The land is in the proposed extension to the AONB which is currently being assessed by Natural England by way of a technical analysis of the natural beauty of the area. The formal designation of the land on the southern shore of the River Stour has been the long term aim of both Essex County Council and Tendring District Council and the commitment to this is set out in both the existing and draft Tendring District Council Local Plans.

It is possible that the development of this land would have a significantly detrimental impact on the character and appearance of the AONB when viewed from the northern bank of the Stour and also when viewed from within the proposed extension to the AONB on the southern bank of the Stour.

No information has been provided relating to the impact of the development proposal on the local landscape character or the AONB. In order to show the potential impact of the development on the local landscape character and the AONB the applicant should provide a Landscape and Visual Impact Assessment (LVIA) prior to the determination of this application. Without this information it will not be possible to ascertain the degree of harm to the character and appearance of the countryside that will be caused by the development of the land.

In terms of the Stour Estuary as habitat for wildlife as wildlife the applicant will also need to demonstrate that the development will not significantly affect species for which the river is designated as a Site of Special Scientific Interest.

In conclusion it is felt that it has not been demonstrated that the development of this land would not adversely affect the setting of the AONB, the local landscape character or the wildlife in the Stour Estuary.

Notwithstanding previous comments the additional information demonstrates that, in terms of its impact on trees, the development proposal could be implemented without causing harm to the majority of the trees on the land. Part of H1 and G1 would need to be removed to facilitate access and an internal road linked land either side of the watercourse that bisects the land.

In order to show the potential impact of the development on the local

landscape character and the AONB the applicant has provided a Landscape and Visual Impact Assessment (LVIA).

The document accurately describes the character and quality of the landscape and the impact that the development proposal would have on it. It recognises that harm would be caused by the change of use of the land. The LVIA addresses the impact of the development on the landscape in the immediate vicinity of the site itself and the wider landscape when viewed from the points identified in the LVIA.

Section 7.1.3 sets out the measures that can be taken to mitigate potential harm and ensure that the development sits relatively comfortably in its setting. These almost exclusively relate to soft landscaping to soften, screen and enhance the appearance of the development.

If this strategy is to be successful it will require a comprehensive soft landscaping scheme to be provided to achieve the objective set out in the LVIA.

In terms of density of dwellings and tree planting opportunities the LVIA states, in section 8.1.3, that lower density housing is proposed in the parts of the application site described as Character Area 1 to facilitate additional tree planting to enhance, screen and generally improve the appearance of the development.

This objective is desirable however it should be noted that those areas described as Character Area 1 area on the northern part of the application site which is lower than the southern part and already benefits from screening provided by tree situated on land forming part of the railway embankment. It may be prudent to re-consider this proposal as a decreased density in the central or southern part of the application site and the associated tree planting that would result may bring about the greatest benefit.

TDC Housing	There is a high demand for housing in Mistley on the housing register and there are currently 144 households seeking a 1 bedroom property, 65 seeking a 2 bedroom property, 28 seeking a 3 bedroom property and 9 seeking a 4 bedroom property or larger. The Council is not in a position to purchase up to 25% of the properties on the site for affordable housing (17 units) and would therefore prefer to be gifted 5 properties as an alternative (5 being 30% of 17 units).
TDC Open Space and Play	There is currently a deficit of 3.00 hectares of equipped play/formal open space in Mistley. No indicative layout has been provided as part of this application and it should be noted that due to the size of the development site, provision for open space and play should be provided for on site, and not by way of an off-site contribution.
ECC Highways	From a highway and transportation perspective the impact of the proposal is acceptable to Highway Authority subject to conditions in respect of the following: <ul style="list-style-type: none">• A construction management plan including details of wheel cleaning facilities;• The creation of a priority junction off Stourview Avenue to provide access;• Upgrading two bus stops in Harwich Road to current Essex County

Council specification;

- A minimum 2 metre wide footway along the eastern side of Stourview Avenue carriageway between the proposed site access and Harwich Road with dropped kerbs/tactile paving crossing points in Stourview Avenue immediately north of its junction with Harwich Road; and
- Residential Travel Information Packs.

ECC Schools

A development of this size can be expected to generate the need for up to 6.3 Early Years and Childcare (EY&C) places and 21 primary school, and 14 secondary school places.

According to the latest information available to Essex County Council early years and childcare team, there is sufficient provision within the ward/surrounding wards to accommodate children from this development.

This proposed development is located within reasonable travelling distance of Mistley Norman CE Primary School, Highfields Primary School and Lawford CE Primary School. These schools have a combined overall capacity of 630 places. These schools overall are forecast to have a surplus of 8 places by the school year 2019-20.

This proposed development is located within the priority admissions area for Manningtree High School. The school has a capacity of 870 places. The school is forecast to have a surplus of 70 places by the school year 2019-20. As the school could accommodate all of the pupils that would be generated by this development, no contribution under normal circumstances would be requested for additional school places. However, the County Council is aware of the proposals for Bromley Road, Lawford (15/00876/OUT) for 360 dwellings Long Road, Mistley (15/00761/OUT) for 300 dwellings and Harwich Road, Mistley (15/01520/OUT) for 135 dwellings.

The County Council is aware of the potential cumulative impact on primary and secondary school places if this development is granted planning permission and one, both or all of the other developments are also granted planning permission. Under these circumstances it is suggested that the Council should share the costs of providing the additional primary and secondary school places pro-rata between the two, three or four sites. The cost at April 2015 is £12,172 per primary place and £18,491 per secondary place, index linked to April 2015.

Feasibility work will need to be undertaken on the primary schools listed above to ascertain whether they have the capacity to accommodate the growth in pupil numbers that could be generated from this proposed housing development and others proposed in the area. If it is not possible to accommodate the growth on existing school sites in the area, then additional land or a new primary school site may be required.

Having reviewed the proximity of the site to the nearest primary and secondary schools, Essex County Council will not be seeking a school transport contribution. However, the developer should ensure that safe and direct walking/cycling routes are available to the nearest schools.

Anglian Water

Assets affected: There are assets owned by Anglian Water or those subject to an adoption agreement within or close to the development

boundary that may affect the layout of the site. Anglian Water would ask that an informative be included within your notice should permission be granted requiring this to be taken into account in any detailed scheme.

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.

Foul Sewerage Network: The sewerage system at present has available capacity for these flows. If the developer wishes to connect to our sewerage network they should serve notice under Section 106 of the Water Industry Act 1991. We will then advise them of the most suitable point of connection.

Surface Water Disposal: From the details submitted to support the planning application, the proposed method of surface water management does not relate to Anglian Water operated assets. As such, we are unable to provide comments on the suitability of the surface water management. The local planning authority should seek the advice of the lead local flood authority of the internal drainage board. The Environment Agency should be consulted if the drainage system directly or indirectly involves the discharge of water into a watercourse. Should the proposed method of surface water management change to include interaction with Anglian Water operated assets, we would wish to be re-consulted to ensure that an effective surface water drainage strategy is prepared and implemented.

NHS England

This development is likely to have an impact on the services of the Riverside Health Centre in Manningtree. This GP practice does not have capacity for the additional growth as a result of this development. Therefore a Health Impact Assessment 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 practice and a developer contribution of £21,120 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

The application site is within or in close proximity to the Stour and Orwell Special Protection Area (SPA) which is also listed as a Ramsar site and a Site of Special Scientific Interest. The Council, as the competent authority under the Habitat Regulations, should have regard to any potential impacts that the development might have.

There are currently concerns for the impact of recreational pressure arising from housing development around the Stour Estuary, in particular the disturbance of birds for which the above sites are in part designated. In our previous letter, we advised that further consideration of recreational disturbance was required before impacts arising from the proposal, in combination with other plans and projects, could be ruled out. This was on the basis that there are areas of sensitive and accessible estuary within 8 km driving distance of the development site which residents would be likely to visit due to the unique draw of estuarine sites for recreation. We therefore advised that further consideration of off-site mitigation measures

(e.g. access and/or visitor management) at the identified locations was required in addition to the proposed on-site open space.

However, Ipswich Borough Council, Suffolk Coastal District Council and Babergh District Council are in the process of jointly producing a Recreational Avoidance and Mitigation Strategy which will be in place by March 2017. Once approved, this Strategy will specify requirements for developer contributions to an agreed and costed scheme of measures to help avoid and mitigate recreational disturbance impacts to designated sites, including the Stour and Orwell Estuary SPA, over the respective plan periods. We understand that your authority will also be involved in the formation of this Strategy and advise that it would therefore be appropriate, in this case, to collect proportionate financial contributions towards this emerging Strategy on the basis that these can then be used to fund strategic measures across the Stour and Orwell Estuary SPA. The amount collected, may, however, need to be revised once the specific detail of the Strategy has been finalised.

With regards the proposed on-site open space, we note that a substantial proportion of the site (approx. 30 %) has been set aside for this use. We welcome that the HRA report (pg. 18) acknowledges that, in order to help reduce the frequency of visits to sensitive parts of the estuary, such open space must be designed to be attractive for dog walking (i.e. to include dog waste bins etc.). As proposed, the inclusion of further on-site measures such as signage, information boards, guides and public rights of way (PRoW) maps will further help mitigate impacts. It should be ensured that the maintenance and management of these on-site measures are secured in perpetuity.

The maximum likely distance for a regular dog walk is a 2.6 km round trip² and so a circular walk of this length should ideally be provided within on-site open space, including a 'dogs-off-lead' area where possible. However, we appreciate that the limited size of the development site in this case means that this is not realistic. We therefore advise that, in order to fulfil this function, links with surrounding PRoW and open space should be explored further within the reserved matters.

In conclusion, we have no objection to this development subject to the above requirements in terms of a financial contribution to the emerging Recreational Avoidance and Mitigation Strategy and the design and management of on-site public open space being secured via suitably worded planning conditions.

RSPB

We object to this proposal as insufficient information has been provided to allow the Council, as the competent authority, to assess whether there will be any likely significant effect on the adjacent Stour and Orwell Estuaries Special Protection Area/Ramsar Site and Stour Estuary Site of Special Scientific Interest (SSSI).

Dedham Vale
and Stour
Estuary Project

The proposal site is within the setting of the Suffolk Coast and Heaths AONB, and visible from the northern side of the Stour Estuary. The land on the northern side of the river is nationally designated as AONB and the Council should ensure that the purpose of this designation is not compromised by the proposed development. The site is also within the 'candidate area' for potential expansion of the Suffolk Coast & Heaths AONB which is indicative only and is currently under investigation by

Natural England. To assess the impact on the setting of the AONB, a Landscape and Visual Impact Assessment is necessary along with an assessment of the potential adverse impacts on the Stour Estuary in ecological terms. [Both of which have since been provided].

Essex County
Council Flood
Authority

Having reviewed the Flood Risk Assessment, we do not object to the granting of planning permission subject to conditions relating to the following:

- a detailed surface water drainage scheme;
- a scheme for minimising offsite flooding during construction works;
- a maintenance plan for the surface water drainage scheme; and
- keeping an on-going log of maintenance.

Babergh District
Council

Babergh District Council wishes to formally object to this application due to the potential impact upon a strategic allocation site at Brantham within the Babergh Core Strategy (2014). The basis for this objection relates to the potential cumulative impact upon the local highway network and in particular the need to give due account to relevant adopted allocations or sites with planning permission within the 'baseline' scenario. There are known transport constraints around the area which are cross boundary in nature and include impacts upon the A137 railway crossing.

This application may cause material prejudice to the outcome of delivering the Brantham strategic allocation scheme, which has already been through a statutory framework (Core Strategy Examination in public) and resolved suitable for allocation in the adopted plan. Full weight and regard should be given to the Brantham scheme when determining the suitability of further growth in the Manningtree, Lawford and Mistleley area. The Council reserves the right to hold this objection until matters are clarified and satisfactory solutions can be found.

5. Representations

5.1 The Council has received 9 objections to the proposal from residents including some lengthy and very well articulated letters raising the following concerns:

- The proposal is particularly vague with very little detail;
- The application includes a larger area of land that was originally envisaged in the Council's Local Plan studies which encroaches greatly on the Coastal Protection Belt;
- The proposed number of dwellings is greater than indicated in both the Council's previous version of the draft Local Plan and its Strategic Housing Land Availability Assessment (SHLAA);
- The proposed access road would open up the possibility of further development to the east;
- The valley has been included in the site area but this is valuable in wildlife and landscape character terms – it is also a habitat for Turtle Doves;
- Access could be achieved via the existing housing estate without the need to create a new access via the valley;
- The valley is part of the Coastal Protection Belt;
- Increases in vehicles and further impact on the crossing at Manningtree Station;
- Air pollution;
- Road/pedestrian safety;

- Cumulative impacts of several developments on education, health and the character of the area;
- Impact on amenities and utilities;
- Limited shopping and employment opportunities locally, leading to reliance on cars;
- Concern about how New Homes Bonus, Community Infrastructure Levy or s106 contributions will be used;
- The Council has a financial interest in the land;
- The agricultural grading of the land should be tested by Natural England;
- Loss of set-aside agricultural land;
- Development is not in accordance with the development plan;
- Destruction of views and enjoyment of the area for existing residents;
- Increases in parked cars;
- The Manningtree, Lawford and Mistley area is being targeted by 'get rich quick' developers;
- Increased risk of flooding; and
- Impact on the proposed AONB.

5.2 Mistley Parish Council has also objected to the application following a public meeting held on 5th January 2016. The reasons for the objection are the size of the size of the development, its density and highway safety, with concerns that the proposed access will significantly increase volume of vehicles and subsequent traffic to Stourview Avenue, Harwich Road, High Street, New Road and The Walls.

5.3 There is also an objection from Welbeck Strategy Land II LLP who are the applicants for the development of up to 135 homes on land off Harwich Road, Mistley that has since obtained planning permission. Their objection raised several concerns about the suitability of the site in planning terms and was submitted before planning permission was granted for their development.

5.4 One letter of support has also been received, pointing out a number of reasons why the site was historically supported by the Parish Council for inclusion in the Local Plan, including that it is of poor agricultural value and could accommodate natural growth within the parish.

6. Assessment

The Site

6.1 The application site comprises just over 4.7 hectares of undeveloped greenfield land on the edge of Mistley. The site comprises two parcels of land which are very different in appearance and character. The main body of the site upon which new homes are expected to be built lies north of existing Council properties and the playground in Stourview Close, east of properties in Seafield Avenue and south of the Harwich to Manningtree railway line – beyond which is the Stour Estuary. The land comprises managed grassland with a small area of woodland to the north and north west and overgrowth to the south immediately abutting the existing housing estate. The topography of the site is unusual – generally sloping downwards towards the railway line and to the north east, but undulating significantly within the site with a distinct high point in the centre of site.

6.2 The eastern parcel of land, through which it is proposed to create the new access road appears very separate from the main body of the site and contains a significant number of trees both along its western boundary (adjoining the main body of the site) and in a cluster through the centre of a site on lower ground around a spring which runs through the land. The topography of this area of land is more dramatic, sloping either side of the valley around the spring. To the front part of the eastern parcel, the land immediately fronting Harwich Road has outline planning permission (Ref: 14/01462/OUT) for 4 dwellings. The red line site includes part of the highway along the edge of Stour view Avenue.

The Proposal

- 6.3 This outline planning application with all matters reserved seeks approval for the principle of up to 70 dwellings with a new access road off Stourview Avenue on the eastern part of the site. The proposal is not supported by any illustrative drawings, but it is intended (as set out in the Design and Access Statement) that the main body of the site will contain the houses and the land to the east will accommodate the new access road which, itself, will connect the development from Stourview Avenue.

Architectural Drawings

- 1126.L.001 Site Location Plan
- 1026.L.002(A) Existing Site Plan

Reports and Technical Information

- Design and Access Statement
- Landscape and Visual Assessment
- Habitat Regulation Assessment
- Ecology Report
- Geological Survey
- Highway Access Statement
- Heritage Statement
- Flood Risk Assessment
- Arboricultural Impact Assessment
- Tree Survey and Constraints Plan
- Utility Report
- Desk Based Risk Assessment

Main Planning Considerations

- 6.4 The main planning considerations are:
- Principle of development;
 - Highways, transport and accessibility;
 - Coastal Protection Belt;
 - Areas of Outstanding Natural Beauty;
 - Landscape, visual impact and trees;
 - Flood risk and drainage;
 - Ecology;
 - Education provision;
 - Healthcare provision;
 - Utilities;
 - Open space;
 - Council Housing/Affordable Housing;
 - Potential layout and density;
 - Council-owned land; and,
 - Overall planning balance.

Principle of development

- 6.5 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.

- 6.6 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. As of 14th July 2016, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Preferred Options Consultation Document. As this plan is currently at an early stage of preparation, some of its policies can only be given limited weight in the determination of planning applications, but the weight to be given to emerging policies will increase as the plan progresses through the later stages of the process. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 216 of the NPPF, they will be considered and, where appropriate, referred to in planning decisions. In general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.
- 6.7 The application site is located immediately adjoining residential development in Mistley. The site is adjacent to but outside the village's settlement development boundary as defined within the adopted Local Plan. The boundary aims to restrict new development to the most sustainable sites and outside of the boundary the Local Plan generally seeks to conserve and enhance the countryside for its own sake by not allowing new housing unless it is consistent with countryside policies. In the emerging Local Plan however, the majority of the site has been included within the revised settlement boundary as depicted in the new emerging Local Plan, indicating a general acceptance that development on the land could, in principle, be accepted in the future.
- 6.8 Because the site lies outside of the settlement development boundary and is not allocated for development in the adopted Local Plan, it is technically contrary to adopted policy and the proposed development would be a departure from that plan. However, paragraph 47 of the NPPF also requires local planning authorities to boost significantly the supply of housing by identifying and updating annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements. In areas where there has been persistent under delivery of housing, an additional 20% 'buffer' is also required to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land.
- 6.9 For Tendring, the housing requirement is 550 dwellings per annum, as based on the evidence contained within the 'Objectively Assessed Housing Needs Study' (July 2015) and supplementary evidence that was presented to the Local Plan Committee on 21st January 2015. At the time of writing, and despite the publication of the new draft Local Plan, the Council was still only able to identify an approximate 4.5 year supply and thus there still remains considerable (albeit quickly reducing) shortfall. Paragraph 49 of the NPPF states that relevant policies for the supply of housing should not be considered 'up to date' if it is not possible to demonstrate a five year supply of deliverable housing sites and, in such cases, the 'presumption in favour of sustainable development' set out in paragraph 14 of the NPPF is engaged.
- 6.10 '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.

- 6.11 Due to the lack of a five-year supply of housing sites and the subsequent engagement of the presumption in favour of sustainable development, the Council would not be justified in refusing planning permission purely on the basis of the application site being outside of the settlement development boundaries in the adopted Local Plan. The application must therefore be judged on its merits against the NPPF.
- 6.12 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".
- 6.13 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. In the adopted Local Plan, Manningtree, Lawford and Mistley are together categorised as a 'town' and in the emerging Local Plan, they are categorised as a 'smaller 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', 'rural service centres' and 'smaller rural settlements' are considered to offer lesser sustainable locations for major development.
- 6.14 Because the Council has a housing land shortfall, the site adjoins an urban settlement where sustainable development on a larger scale can be achieved and most of the land is provisionally included within the settlement development boundary of the emerging Local Plan, Officers consider that the principle of residential development on the application site is acceptable.

Highways, transport and accessibility

- 6.15 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 and 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.
- 6.16 Policy QL2 in the adopted Local Plan and Policy CP1 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 400 metres walking distance of Mistley Norman Primary School, within 900 metres of Mistley Village Hall, within 500 metres of a local convenience shop, within 1.2 kilometre of Mistley railway station and Mistley High Street. The site is also within 500 metres of a bus stop on a bus route with services between Colchester and Harwich and to and from Clacton. The site offers a reasonable level of accessibility which is reflected in Manningtree, Lawford and Mistley's categorisation as a smaller urban settlement in the emerging Local Plan.
- 6.17 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.

- 6.18 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 some residents that had objected to this planning application along with Babergh District Council. Queuing at the railway crossing is a known problem in the area. Because this is one of a number of major development proposals in the pipeline for the area, the cumulative impacts have required collaborative assessment under the direction of Essex and Suffolk County Council as the relevant local Highway Authorities. This additional assessment has led, in part, to a delay in determining this application.
- 6.19 Having considered the application and the potential cumulative impacts on traffic, the Highway Authority has concluded that this particular development will not have a severe impact on highway capacity and safety and that no mitigation towards improvements at the A137 railway crossing will be requested from this development. Mitigation measures, in the form of contributions towards a £150,000 fund towards traffic calming measures at the railway crossing are however being secured, through s106 legal agreements for some of the larger developments proposed on land further west, closer to the railway crossing, including the major developments in Brantham and Lawford and off Long Road, Mistley. These measures address the concern raised by Babergh District Council in its representation and there are consequently no outstanding concerns about complying with the legal duty to cooperate.
- 6.20 The Highway Authority is satisfied that this development in Mistley can be supported, subject to some specific conditions relating mainly to the vehicular access arrangements, construction traffic and footpath/cycleways.
- 6.21 In conclusion, the site is reasonably accessible, by foot and cycle, to local services and facilities and public transport and the vehicular access and highways matters have been considered and deemed acceptable by the Highway Authority. The transport impacts of the development are not considered to be severe and, from this perspective, Officers consider the proposal to be acceptable.

Coastal Protection Belt

- 6.22 The whole application site falls within the Coastal Protection Belt as shown in the adopted Local Plan. The purpose of the Coastal Protection Belt, as set out in paragraph 6.14 in support of Policy EN3 in the adopted Local Plan, is to protect the unique and irreplaceable character of the Essex coastline from inappropriate forms of development. It goes on to say that open coastal areas are particularly vulnerable to visual intrusion due to the high visibility of any development on the foreshore, on the skyline and affecting vistas along the stretches of undeveloped coast.
- 6.23 The Coastal Protection Belt was originally drawn in 1984 and was a key strategic policy in Essex County Council's 2001 Replacement Structure Plan which was superseded by the East of England Plan in 2008 and subsequently abolished in 2012 with the introduction of the NPPF. The NPPF does however state, in paragraph 114 that local planning authorities should maintain the character of the undeveloped coast, protecting and enhancing its distinctive landscapes, particularly in areas defined as Heritage Coast, and improve public access to and enjoyment of the coast.
- 6.24 Policy EN3 states that new development which does not have a compelling functional need to be located in the Coastal Protection Belt will not be permitted. It requires applicants to

demonstrate such a need by showing that by reason of its critical operational requirements of the development cannot be located outside of the designated area. Then, even if the compelling need is demonstrated, the policy requires that significant harm to the landscape character and quality of the undeveloped coastline should be avoided.

- 6.25 However, in the emerging Local Plan, following the abolition of the Coastal Protection Belt Policy at county and regional level, the Council decided that the designation should be kept but that the boundary be rationalised to ensure it relates only to areas that are genuinely coastal and where development is likely to have a genuine impact on the character and appearance of the coastline. Included in the numerous amendments to the designation was the removal of the application site.
- 6.26 The status to be given to local 'countryside protection' policies such as Coastal Protection Belt and Local Green Gaps has been clarified recently by a decision of the Court of Appeal (Cheshire East Borough Council v Secretary of State for Communities and Local Government & Anr. Case Number: C1/2015/0894) in which three judges overturned an earlier High Court decision which had determined that such countryside protection policies are not housing policies and should not be considered out of date if a Council cannot identify a sufficient supply of housing land. In overturning the High Court's decision, the Court of Appeal judges concluded that the concept of 'policies for the supply of housing' should not be confined to policies in the development plan that provide positively for the delivery of new housing in terms of numbers and distribution or the allocation of sites. They concluded that this concept extends to policies whose effect it is to influence the supply of housing land by restricting the locations where new housing may be developed – including, for example, policies for the green belt, policies for the general protection of the countryside, policies for conserving the landscape of Areas of Outstanding Natural Beauty and National Parks, policies for the conservation of wildlife or cultural heritage, and various policies whose purpose is to protect the local environment in one way or another by preventing or limiting development.
- 6.27 Whilst the emerging Local Plan only carries limited weight, the abolition of the Coastal Protection Belt policy at county, regional or national level also limits the amount of weight that can be applied to the adopted policy. From the ground, the site is relatively well contained by landscaping and physical features and views over the Estuary are limited. On the basis that development in this location and on this site is unlikely to have a severe detrimental impact on the character of the undeveloped coastline, Officers have applied limited weight to the Coastal Protection Belt policy and consider that refusing planning permission against this policy would be difficult to defend on appeal.

Areas of Outstanding Natural Beauty

- 6.28 The proposed area of extension to the Suffolk Coast and Heaths Area of Outstanding Natural Beauty (AONB) includes application site. Policy EN5a in the adopted Local Plan seeks to ensure that, in determining planning applications, the natural beauty of the landscape within the area, and views towards it are protected – having regard to the Suffolk Coast and Heaths Strategy.
- 6.29 Representatives of the Dedham Vale and Stour Estuary Project have written to highlight that the site is visible from the northern side of the Stour Estuary – the area that is part of the established AONB. They urge that the purpose of this designation is not compromised by the proposed development and that the findings of a Landscape and Visual Impact Assessment are key to determining this.
- 6.30 The Council's Principal Trees and Landscapes Officer has also commented on the application to highlight the importance of the Suffolk Coast and Heaths Area of Outstanding Natural Beauty and the need to ensure that its setting is appropriately safeguarded. Initially,

he suggested that development of this land would have a significantly detrimental impact on the character and appearance of the AONB when viewed from the northern bank of the Stour and also when viewed from within the proposed extension to the AONB on the southern bank of the Stour. However, following the submission of a Landscape and Visual Impact Assessment, it is accepted that adverse impacts could be mitigated through the appropriate use of landscaping.

- 6.31 Because the Local Plan is out of date and the Council cannot identify sufficient land to meet projected housing needs, Officers must refer back to the NPPF. Paragraph 115 states that great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty. Paragraph 116 goes to state that planning permission should be refused for major development in these designated areas except in exceptional circumstances and where it can be demonstrated they are in the public interest. Because the application site is not within a formally designated AONB at the moment, refusal purely on a point of principle would not be justified and landscape and visual impacts need to be weighed up alongside the benefits of development.

Landscape, visual impact and trees

- 6.32 Whilst Officers have concluded that the site's location within the Coastal Protection Belt and the proposed extension to the Suffolk Coast and Heaths AONB cannot justify the refusal of planning permission on a matter of principle, Policy QL9 in the adopted Local Plan and Policy SPL3 in the emerging Local Plan still 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 PPL3 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 SPL3 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.
- 6.33 The Council's Principal Trees and Landscapes Officer identifies that the site is situated on the Stour Valley System Landscape Character area, directly adjacent to the northernmost part of the Bromley Heathland Plateau, as identified in the Council's own Landscape Character Assessment. In this area, particular regard has to be given to the setting of the Stour Estuary. Although the site is on the coastal slopes and is currently an undeveloped part of the open countryside, views from the site out towards the Stour Estuary and the wider countryside are very limited as a result of the existing trees and landscaping around the perimeter of the site with the best filtered views from the central high point of the site looking in a north easterly direction.
- 6.34 The applicant's Landscape and Visual Impact Assessment considers important elements of the landscape and the potential visual impact of the proposed development from different viewpoints around the site, including from the north of the Stour Estuary. The assessment then takes the value of the particular view, its sensitivity to change and the likely impact of development to measure the severity of any landscape and visual impacts. The assessment concludes that harm would be caused by the change of use in the land but sets out measures that could be taken to mitigate the harm and ensure the development sits relatively comfortably in its setting. These measures relative to soft landscaping to soften, screen and enhance the appearance of the development. The Tree and Landscape Officer has made observations on the proposed measures and has suggested ways in which they could be improved to minimise adverse impacts given the topography of the site. Subject to the approval of a suitable layout at reserved matters stage along with a

comprehensive soft landscaping scheme, development could be achieved in a sympathetic manner.

- 6.35 Turning to trees, there are none in the main body of the land to the west of the hedgerow adjacent to the watercourse although there are established trees, scrubby growth and hedgerows on the perimeter of this part of the site. On the part of the application site to the east of the watercourse and extending from Harwich Road to the railway track there are several trees with reasonable visual amenity value as advised by the Council's Principal Tree and Landscape Officer which are clearly visible on the site. Initially, the Tree Officer raised concern that, in the absence of details of the proposed layout, it was not possible to determine whether or not vegetation would be removed in order for the development to take place. However, following the submission of more information, he is satisfied that the development proposal could be implemented without causing harm to the majority of the trees on the land – accepting that some trees would need to be removed to facilitate access and an internal road linked land either side of the watercourse that bisects the land.
- 6.36 The key test for the Council is whether or not adverse impacts would significantly and demonstrably outweigh the benefits of the development and whether the impact could be reduced or mitigated through landscaping and careful design. On the basis that adverse landscape impacts on the immediate area are generally unavoidable when it comes to greenfield settlement expansion, important views from the wider area including the AONB can be minimised and landscaping and good design has the potential to reduce and mitigate most impacts, Officers consider that the adverse impacts would not outweigh the benefits of development and a recommendation of refusal in this instance would not be justified.
- 6.37 Because this is a matter that has required balanced judgement, if the Committee chooses to take a contrary view, landscape and visual impact is at least a material planning consideration that could be argued as a reason for refusal, if necessary, at appeal – but your Officers' advice is that the harm is not significant and demonstrably enough to justify the refusal of this application given the remaining housing land shortfall.

Flood risk and drainage

- 6.38 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.
- 6.39 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.
- 6.40 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.

Ecology

- 6.41 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. Policy EN6 of the adopted Local Plan and Policy PPL4 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.
- 6.42 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 Mistleley 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 more than 400 metres from the Stour Estuary and separated by the railway line which prevents any direct disturbance, consideration still needs to be given to potential indirect effects on the designated area that might result from the proposed development.
- 6.43 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.
- 6.44 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. The applicant has undertaken a Habitat Regulation Assessment and Natural England has advised that the assessments provided with the application and the fact that a considerable amount of recreational and informal open space would be secured as part of the development means that there would be no significant detrimental impact on the designated areas. A financial contribution towards implementation of a Recreational Avoidance and Mitigation Strategy being undertaken jointly by Ipswich Borough Council, Suffolk Coastal District Council and Babergh District Council has also been requested as part of the mitigation. The RSPB (Royal Society for the Protection of Birds) made an objection on the basis that insufficient information had been provided to the Council to demonstrate that there would not be a significant effect, particularly when considered 'in combination' with other plans and projects in the area. This has now been addressed.
- 6.45 It is Officers' view that appropriate assessment in this instance is not required given the position of the site, the limited opportunities to access the Estuary due to the barrier provided by the railway line and the level of open space that would be secured, and the fact that the in-combination effects resulting from other developments in the area have already been carefully considered by Natural England and Officers.

- 6.46 The ecological value of the site itself is of considerable concern to a number of local objectors. The applicant had prepared and submitted a Phase 1 Ecological Assessment to assess the ecological value of the site and immediate area itself and the potential impact of the development. For the main body of the site where the residential development will take place, the assessment notes that the land is open grassland managed, probably by an annual hay cut or simple topping regime. For the eastern part of the site through which the access road is proposed, the phase 1 assessment suggested that further phase 2 surveys would be required. On Officers advice, these have been undertaken for the whole site by professional ecologists on behalf of the applicants and the findings are summarised below:
- 6.47 Woodland: There is a very small section of Biological Action Plan Priority Habitat designated deciduous woodland adjacent to the very northern boundary of the proposed development site. This will not be reduced in size or conservation value by the proposed development, its conservation and biodiversity value could be enhanced through suitable management as part of the wider site development.
- 6.48 Badgers: Field signs were noted as part of the survey, but setts were found within the site boundary.
- 6.49 Bats: The pocket of woodland in the north eastern corner of the site has moderate potential to support bat roosts, with a single mature tree identified as having high potential. All other trees present have negligible potential to support bat roosts. The trees with roost potential will remain in place and will be unaffected by the proposed development. The majority of the foraging activity was noted along the central hedgerow and in the small area of woodland to the north east of the site and these features were confirmed to be in use by common species of bat including Common Pipistrelle and Soprano Pipistrelle.
- 6.50 Reptiles: The grassland on the site was confirmed suitable for reptiles during the survey with Common Lizard, Slow-worm and Grass Snake using the site.
- 6.51 Invertebrates: Main species found are widespread in grassland habitats. Few species were recorded within the woodland, but a number of scrub edge specialists were recorded and also species associated with bark and sapwood decay, as specialist dead wood habitats. With three species of conservation concern, the site is considered to be of District level value for invertebrates.
- 6.52 Breeding Birds: The site was found to support a relatively high diversity and number of breeding bird species. Most of the species are common and widespread, but seven bird species of conservation concern were recorded. Key habitats used by breeding birds included the scrub and trees present along the boundary of the site, which are considered important on a site scale. The impact assessment concludes that the site will have a negligible impact upon all designated and non-designated sites for nature conservation present in the local area.
- 6.53 Mitigation and Enhancement: To mitigate any harm and bring about an overall enhancement for ecology, the assessment recommends measures that could be secured through planning conditions:
- Five bat bricks should be included within the scheme. Alternatively, bat boxes could be placed, however these tend to be less robust than bat bricks;
 - Inclusion of mini log piles or log pyramids for invertebrates;
 - Shrub and tree species to be included should be considered beneficial to wildlife. Species to be avoided include Birches, (other than Silver Birch (*Betula pendula*)) and non-native evergreen shrubs;
 - Inclusion of bug hotels. Inclusion of hibernacula and log piles for reptiles;
 - Inclusion of a Hedgehog house; and
 - Inclusion of five bird boxes suitable for Starling and House Sparrow.

- 6.54 Officers note the findings of the report and welcome the potential to deliver an enhanced wildlife habitat in the location off the back of the development. The recommended mitigation measures/enhancement measures can be secured through a planning condition requiring an ecological plan to be agreed by the Council prior to the commencement of the development.

Education provision

- 6.55 Policy QL12 in the adopted Local Plan and Policy PP12 in the emerging Local Plan require that new development is supported by the necessary infrastructure which includes education provision. A large number of local residents have expressed concern that local schools will not be able to cope with the expected increase in population arising from the 70 new homes, particularly when considered alongside other proposals for major residential development either approved or under consideration in the wider area.
- 6.56 Essex County Council as the Local Education Authority has been consulted on the planning application and has made representations. ECC's advice was submitted in response to this application in isolation however the cumulative effect of other potential developments has also been taken into account. ECC advised that, based on its standard formula, a development of this size can be expected to generate the need for up to 6.3 Early Years and Childcare (EY&C) places, 21 primary school places, and 14 secondary school places.
- 6.57 ECC is satisfied that there would be sufficient provision of Early Years and Childcare facilities and primary school places in the area to address the needs of the development. However, this advice pre-dated the approval of the development for up to 135 dwellings on land south of Harwich Road (15/01520/OUT). If additional places are required, a sum of £12,172 per place would be needed – a maximum of £255,612. Updated advice has been sought from ECC as to the financial contributions now required, but at the time of writing this had yet to be received and Officers suggest that the Council reserves the right to secure any necessary funds through a s106 legal agreement..
- 6.58 For secondary school provision, ECC advised that the additional pupils expected from the scheme on its own could be accommodated within existing capacity at Manningtree High School, however ECC was mindful the potential impacts of other developments under consideration in the area – namely the 360 homes off Bromley Road, Lawford (15/00876/OUT) which has a Committee resolution to approve subject to a s106 legal agreement; the 300 homes off Long Road, Mistley (15/00761/OUT) which now has outline planning permission; and the 135 homes off Harwich Road (15/01520/OUT) which also has planning permission. At the time of ECC's advice, it was suggested that the cost of providing additional secondary school places be shared by the four development sites if the Stourview Avenue scheme were to be approved. The cost would be £18,491 per place – a maximum of £258,874. Updated advice has been sought from ECC as to the precise financial contributions are required, but at the time of writing this had yet to be received and Officers suggest that the Council reserves the right to secure any necessary funds through a s106 legal agreement.

Health provision

- 6.59 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 HP1 in the emerging Local Plan, new development needs to be supported by the necessary infrastructure, including health provision.

- 6.60 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.
- 6.61 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 HP1, 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. It is noted that there is local scepticism about how this will work in practice, but in the absence of an up to date Local Plan, this is an approach that has been accepted by Planning Inspectors.
- 6.62 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. 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.
- 6.63 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 £21,120 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.

Utilities

- 6.64 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.

Open space

- 6.65 Policy COM6 in the adopted Local Plan and Policy HP3 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. To comply with these policies, a minimum of approximately 0.5ha of the land needs to be provided as green infrastructure – much of which is expected to be provided along the northern part of the site to assist in minimising visual impacts on the Stour Estuary. A larger area than this will, in reality be secured because much of the eastern parcel of land is unsuitable for development and more space is needed to mitigate any concerns about recreational

disturbance at the Stour Estuary. The detailed dimensions of the open space would be confirmed at reserved matters stage.

- 6.66 The Council's Open Space and Bereavement Service Manager has commented on the application and has identified a deficiency of open space in the Mistley area and has advised that if the on-site open space is to be transferred to Tendring District Council for future maintenance, an additional financial contribution towards maintenance will also need to be secured through a s106 legal agreement. If the Committee is minded to approve this application, Officers will engage in negotiations with the applicant to agree the necessary contribution in line with the guidance contained within the Council's Supplementary Planning Document on Open Space.

Council Housing/Affordable Housing

- 6.67 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 LP5 in the emerging Local Plan, which is based on more up to date evidence on viability, requires 30% of new dwellings on large sites to be made available for affordable or 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 30% requirement.
- 6.68 The Council's Housing Needs team has commented on the application and advised that there is a significant need for affordable housing in the Mistley area based on evidence from the local housing register. It has been suggested that, as an alternative to transferring 30% of properties to the Council (up to 21 dwellings) at a discounted value, the Council would be prepared to accept 5 properties 'gifted' (i.e. transferred to the Council or a nominated partner or trust at zero cost).
- 6.69 If the Committee is minded to approve this application, Officers will negotiate and agree an appropriate level of Council Housing to be secured through a s106 legal agreement.

Potential layout and density

- 6.70 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 70 dwellings, access road and open space can be accommodated on the site in an appropriate manner. The applicant has not provided an indicative layout, so Officers have needed to consider the land available, the constraints affecting the site and the potential density.
- 6.71 Whilst the eastern parcel of land is expected to accommodate the proposed access road (carefully located to minimise the loss of trees), it is the main body of the site to the west that is expected to accommodate up to 70 dwellings. This parcel of land measures approximately 3 hectares and therefore the gross density of development could be as high as 23 dwellings per hectare. Assuming that, as an absolute minimum, 0.3 hectares is used for open space, the net density would be around 26 dwellings per hectare. The more open space secured, the higher the density could be. The residential density of the adjoining housing estate, for context, is approximately 35 dwellings per hectare.

Council-owned land

- 6.72 Some objectors to the application have queried why the name of the Council's Chief Executive appears on the planning application forms – concerned that he has a personal and prejudicial interest in the land. Our Chief Executive does not have any personal interest in the land, but his name is on the form because Tendring District Council owns some of the

land at Stourview Avenue that would be required to create the proposed access road. Through a separate process, the disposal of this land has been provisionally agreed – but this should not be seen as a green-light for the development to obtain planning permission. The Planning Committee should make that decision on planning grounds, irrespective of any interest that the Council, as landowner, has in the site.

Overall planning balance

- 6.73 Because the Council's Local Plan is out of date and a five-year supply of deliverable housing sites cannot currently be identified, the National Planning Policy Framework (NPPF) requires that development be approved unless the adverse impacts would significantly and demonstrably outweigh the benefits, or if specific policies within the NPPF suggest development should be refused. The NPPF in this regard applies a 'presumption in favour of sustainable development' for which sustainable development addresses economic, social and environmental considerations.
- 6.74 Economic: Whilst the scheme is totally residential with no commercial premises provided, up to 70 dwellings would generate additional expenditure in the local economy which has to be classed as an economic benefit. There will also be temporary jobs in construction whilst the homes are being built.
- 6.75 Social: The provision of up to 70 dwellings toward meeting projected housing need, at a time when the Council is unable to identify a five-year supply, is a significant social benefit which carries a high level of weight in the overall planning balance – particularly as government policy is to boost housing supply. Additional social benefits include the proposed open spaces that will be secured. The impacts of health and schools provision will be mitigated through appropriate financial contributions to be secured through a s106 agreement, if the application is approved.
- 6.76 Environmental: The environmental impacts of the proposal have required very careful consideration. The site is within the Coastal Protection Belt and forms part of the area under consideration for inclusion in an expanded Area of Outstanding Natural Beauty. Officers consider that these factors should not preclude the potential for development in principle but the visual impacts need to be weighed up against the benefits. In this instance, the visual impacts are not expected to be severe and through landscaping can be softened or mitigated. Ecological impacts, both indirect in terms of recreational disturbance at the Stour Estuary and direct in terms of protected species on the site have been carefully assessed and mitigation measures that could lead to an overall enhancement are suggested.
- 6.77 In the overall planning balance, Officers consider that the adverse impacts do not significantly and demonstrably outweigh the benefits and the application is therefore recommended for approval subject to a s106 legal agreement and a range of planning conditions.

Background Papers

None.