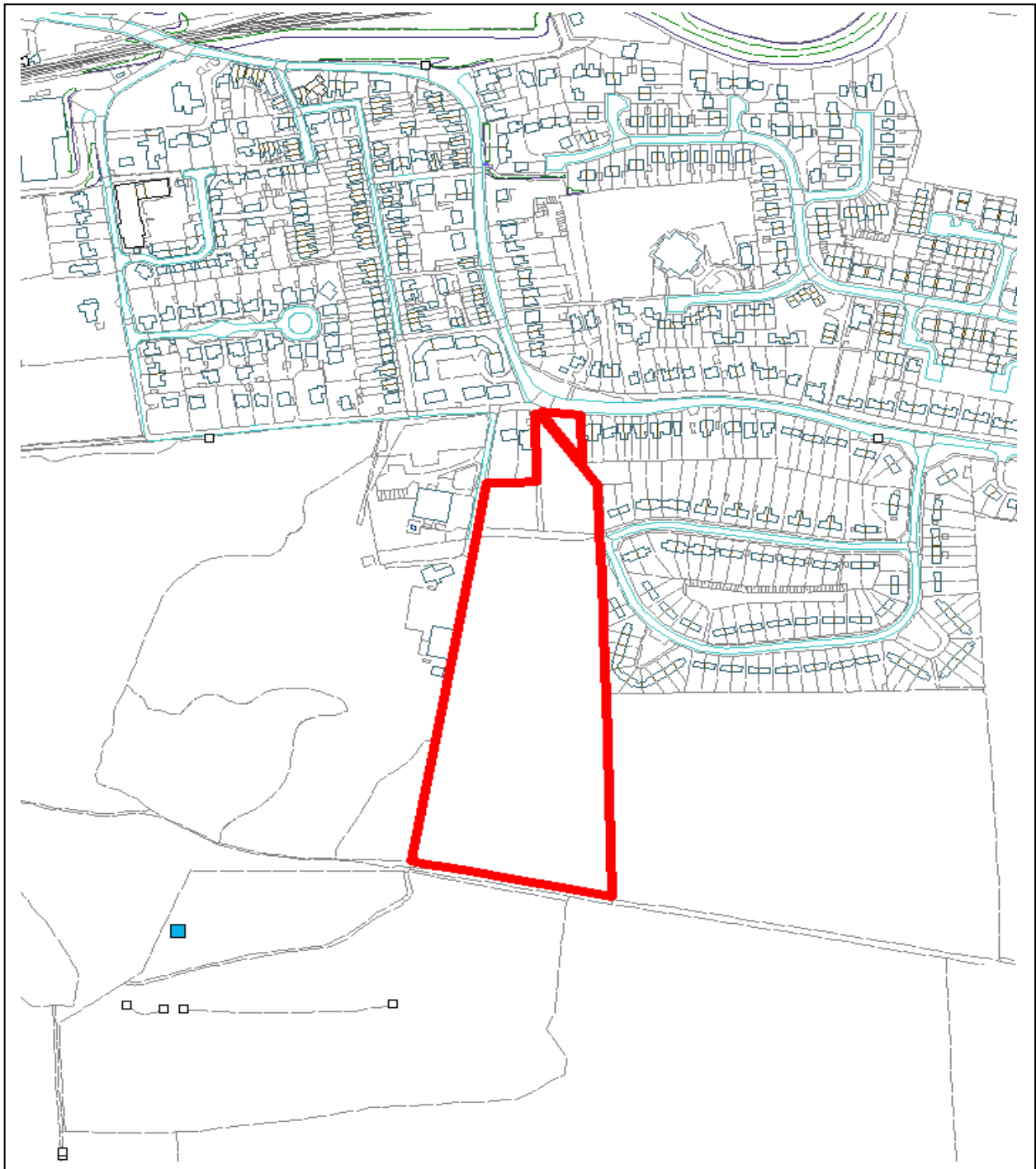


PLANNING COMMITTEE

7 SEPTEMBER 2016

REPORT OF THE HEAD OF PLANNING

**A.2 PLANNING APPLICATIONS – 15/01787/FUL - SITE TO SOUTH OF POUND CORNER  
HARWICH ROAD, MISTLEY, CO11 2DA**



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<b>Application:</b>	15/01787/FUL	<b>Town / Parish:</b> Mistley Parish Council
<b>Applicant:</b>	Mr Sharer and Glausiusz	
<b>Address:</b>	Site to South of Pound Corner, Harwich Road, Mistley, CO11 2DA	
<b>Development:</b>	Proposed development of 25 two and three bedroom bungalows.	

## **Report Update**

### **Background**

This planning application was reported to the Planning Committee on 19 April 2016. The committee resolved that the application be deferred to enable negotiations to take place with the applicant about the removal of or alteration to the proposed northern access road to/from Harwich Road.

### **Amendments**

An amended layout plan was submitted on 25 July 2016 which amends the northern access road and makes consequential changes to the layout and design of plots 1 and 2.

The amended layout moves the access road approximately 20 metres to the east of its previously proposed position, away from the property to the west of the entrance to the site and away from the bend in Harwich Road. The road is proposed to be 5.5m wide for the first 6m into the site and then 4.8m wide. The existing footpath across the site is proposed to be realigned as a 2m wide footpath alongside the proposed access road for about 35m; and then it continues on its current alignment in addition to the continuation of a 2m path alongside the new access road.

The footpath running alongside the access road would be a minimum of 6m away from the house to the east of the site and landscaping is proposed between the highway and the boundary of the site with this property.

The realignment of the access necessitates the repositioning of the bungalow proposed at Plot 2 to the east of its previous position. This also requires a change from plots 1 and 2 being semi-detached to them being detached dwellings and plot 2 is a handed version of the previous proposal.

### **Consultee and neighbour comments**

ECC highways have been consulted on the amended layout and have responded to confirm that they have no objection subject to the imposition of conditions.

Mistley Parish Council makes no objection to the amended plan, but comments that the access road should be full width for two-way traffic and also include pedestrian access.

### **Neighbour comments**

The occupiers of 86 Pound Corner which is adjacent to the site have objected to the proposed new access road which exits on to the Harwich Road. Their concerns relate to the relationship of the proposed access to other access points in the area and issues on Harwich Road as well as requesting that the boundary screening to their property does not shade their south facing garden.

The Mistley Allotment and Leisure Gardeners Association have requested that the land to be gifted as allotments is transferred within 3 months of the planning decision.

## **Planning considerations**

### Highways

The amended layout responds to the Planning Committee's resolution of 19 April 2016 by moving the proposed access road approximately 20 metres to the east of its previously proposed position. This adjustment takes the access away from the property to the west of the entrance and away from the bend in Harwich Road.

The County Council has confirmed that it has no objection to this layout and maintains its recommendation that conditions are attached to the grant of planning permission. One neighbour has raised concerns about the relationship of the proposed access to other access points in the area.

It is considered that the amended access would provide a safe access to the proposed development and the concerns expressed by the neighbour would not be sufficient to refuse planning permission.

### Neighbouring amenity

The realigned access road would be further away from the residential property to the west of the site entrance and closer to the property to the east of the entrance than the previous layout. The occupiers of the dwelling to the east have requested that screening of the access road does not shade their south facing garden. It is recommended that the means of enclosure and the landscaping along this boundary are controlled by condition to ensure that a satisfactory relationship is achieved between the site and its neighbours.

### Allotments

The local allotment association has requested that the land for allotments is transferred within 3 months of the planning decision in order that the land can be prepared for its intended use. Such a requirement would not meet the tests for conditions/legal agreements; the trigger for release should be related to the development of the land rather than the grant of planning permission. However, the association's desire to commence preparation work can be borne in mind when drafting the S106 agreement.

### **Recommendation: Approve**

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;
- Transfer of land for allotments and extension to playing fields
- New bus stop (westbound) in the vicinity of the junction with Harwich Road
- New bus stop (eastbound) in the vicinity of the junction with Harwich Road

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 in their discretion considers appropriate).

(i) Conditions:

1. Standard time limit
2. Development in accordance with submitted plans
3. Retention of existing hedges and trees
4. External facing and roofing materials
5. Works to be carried out outside bird breeding season
6. Screen walls/fences.
7. Full method statement for approval by Pollution and Environmental Control.
8. Hard and soft landscaping
9. Landscape planting period
10. Landscape management plan
11. Existing and proposed site levels
12. Construction of carriageway of estate roads
13. All off-street parking provided in accordance with adopted standards
14. Residential Travel Plans
15. Removal of Permitted Development Rights for dormer windows and rooflights.
16. Driveways and parking areas constructed of porous materials, or provision made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwellings
17. Highways conditions (as recommended by the Highway Authority);
18. SUDS conditions as requested by Essex County Council;
19. Ecological mitigation as set out in Bat Activity and Reptile Survey by Geosphere Environmental dated 2<sup>nd</sup> September 2015
20. Tree protection measures;
21. Environmental Health conditions;

c) That the Head of Planning 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.

## **REPORT TO 19 APRIL 2016 PLANNING COMMITTEE:**

### **1. Executive Summary**

- 1.1 This application is for the construction of 25 bungalows on land to the south of Harwich Road, Mistley and includes the retention of existing allotment land and the provision of a new playing field.
- 1.2 The site comprises a total area of 4 hectares of which approximately 0.6 hectares is allotment land immediately south of Harwich Road and 3.4 hectares of greenfield agricultural land beyond the allotments to the south. The current application proposes to develop the 1.3 hectares to the northern part of the site which abuts the existing built up area.
- 1.3 The site lies completely outside but adjacent to the 'settlement development boundary' in both the adopted and emerging Local Plans. Therefore residential development in this location is contrary to local planning policy aimed at directing the majority of development toward sites within the defined boundary as a means of promoting a sustainable pattern of development across the district.
- 1.4 In both the adopted and emerging plans, Manningtree, Lawford and Mistley are together categorised as a 'town' or 'urban settlement' in recognition of their collective size and range of services and facilities and as a location where sustainable development on a larger scale can be achieved.

- 1.5 The proposal has attracted some objection from individual members of the public while Mistley Parish Council has written in objection to highlight a number of concerns relating mainly to highway safety, cumulative impact as well as the fact that the development is contrary to Local Plan Policy. There are no outstanding objections from any of the statutory consultees or other technical bodies.
- 1.6 The Highways Authority has no objection to the scheme subject to conditions and the Education Authority have indicated that no contributions would be requested for early years and child care, primary or secondary school places. In addition Anglian Water has no objection to the scheme and Essex County Council SuDS also has no objection subject to conditions being attached to any approval. TDC Officers advising on open space, housing, environmental health and trees and landscapes have commented on the application and have no objections to the proposal subject to appropriate conditions or legal agreements being put in place to secure an appropriate level of Council/affordable housing, to secure open space provision and to retain and enhance important trees and landscape features.
- 1.7 The application site is also located within a 'Local Green Gap' and within the Coastal Protection Belt as defined within the 2007 adopted Plan. This impact upon a defined gap must be weighted up against the significant lack of housing land within the District, emerging policy and the potential benefits such a scheme could deliver.
- 1.8 It is accepted that the Council cannot demonstrate a deliverable 5 year housing land supply. The National Planning Policy Framework (NPPF) sets out that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.
- 1.9 Given the above, the current application should therefore be considered under the presumption in favour of "sustainable development". The NPPF requires the decision maker to grant planning permission, unless there are (a) adverse impacts and (b) such impacts would 'significantly and demonstrably' outweigh the benefits of the proposal.
- 1.10 The Officers are of the view that current scheme would deliver benefits especially in addressing the Councils housing shortfall while also contributing to investment and regeneration in the area.
- 1.11 Notwithstanding the benefits of the scheme the balanced approach promoted by the NPPF also requires consideration of any potential harm as a result of development proposals. In this instance officers consider that the extent of potential harm would be limited to the impacts on the Green Gap designation, character of the area, impact on neighbouring amenities, impacts on surface water flooding and impacts on ecology. However in officer's opinion the applicant has provided compelling evidence as part of their submission which indicates that the proposal would not result in any adverse impacts that would significantly or demonstrably outweigh the benefits.
- 1.12 Officers consider that the proposal satisfies the three dimensions of 'sustainable development' as set out in national planning policy (economic, social and environmental) and the application is therefore recommended for approval subject to the satisfactory completion of a Section 106 planning obligation to secure affordable housing, public open space, play provision and a financial contribution toward educational facilities to make the development acceptable, as well as a number of planning conditions.

## **Recommendation: Approve**

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;
- Transfer of land for allotments and extension to playing fields
- New bus stop (westbound) in the vicinity of the junction with Harwich Road
- New bus stop (eastbound) in the vicinity of the junction with Harwich Road

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 in their discretion considers appropriate).

(i) Conditions:

1. Standard time limit
2. Development in accordance with submitted plans
3. Retention of existing hedges and trees
4. External facing and roofing materials
5. Works to be carried out outside bird breeding season
6. Screen walls/fences.
7. Full method statement for approval by Pollution and Environmental Control.
8. Hard and soft landscaping
9. Landscape planting period
10. Landscape management plan
11. Existing and proposed site levels
12. Construction of carriageway of estate roads
13. All off-street parking provided in accordance with adopted standards
14. Residential Travel Plans
15. Removal of Permitted Development Rights for dormer windows and rooflights.
16. Driveways and parking areas constructed of porous materials, or provision made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwellings
17. Highways conditions (as recommended by the Highway Authority);
18. SUDS conditions as requested by Essex County Council;
19. Ecological mitigation as set out in Bat Activity and Reptile Survey by Geosphere Environmental dated 2<sup>nd</sup> September 2015
20. Tree protection measures;
21. Environmental Health conditions;

c) That the Head of Planning 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 Policy:

The National Planning Policy Framework (NPPF) (2012):

- 2.1 The National Planning Policy Framework (March 2012) sets out the Government's planning policies and how these are expected to be applied at the local level.
- 2.2 Planning law requires that applications for planning permission be determined in accordance with the 'development plan' unless material considerations indicate otherwise. The NPPF doesn't change the statutory status of the development plan as the starting point for decision taking. Where proposed development accords with an up to date Local Plan it should be approved and where it does not it should be refused - unless other material considerations indicate otherwise. An important material consideration is the NPPF's 'presumption in favour of sustainable development'. The NPPF defines 'sustainable development' as having three dimensions:
- an economic role;
  - a social role; and
  - an environmental role.
- 2.3 These dimensions have to be considered together and not in isolation. The NPPF requires Local Planning Authorities to positively seek opportunities to meet the development needs of their area whilst allowing sufficient flexibility to adapt to change. Where relevant policies in Local Plans are either absent or out of date, there is an expectation for Councils to approve planning applications, without delay, unless the adverse impacts would significantly and demonstrably outweigh the benefits.
- 2.4 Section 6 of the NPPF relates to delivering a wide choice of quality new homes. It requires Councils to boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years worth of deliverable housing land against their projected housing requirements (plus a 5% or 20% buffer to ensure choice and competition in the market for land). If this is not possible, housing policies are to be considered out of date and the presumption in favour of sustainable development is engaged with applications for housing development needing to be assessed on their merits, whether sites are allocated for development in the Local Plan or not.

### **Local Plan**

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

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

Relevant policies include:

QL1 – Spatial Strategy

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 Use

HG1 – Housing Provision

HG4 – Affordable Housing in New Development

HG7 – Residential Densities

HG9 – Private Amenity Space

COM6 – Provision of Recreational Open Space for New Residential Development

COM19 – Contaminated Land

COM20 – Air Pollution/Air Quality

COM21 – Light Pollution

COM22 – Noise Pollution

COM23 – General Pollution

COM26 – Contributions to Education Provision

EN1 – Landscape Character

EN2 – Local Green Gaps

EN6 – Biodiversity

EN13 – Sustainable Drainage Systems

EN23 – Development Within the Proximity of a Listed Building

EN29 – Archaeology

TR1a – Development Affecting Highways

TR1 – Transport Assessment

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

Relevant policies include:

SD1 – Presumption in Favour of Sustainable Development



SD2 – Urban Settlements

SD6 – Managing Growth

SD7 – Securing Facilities and Infrastructure

SD8 – Transport and Accessibility

SD9 – Design of New Development

SD10 – Sustainable Construction

PRO2 – Improving the Telecommunications Network

PRO3 – Improving Education and Skills

PEO1 – Housing Supply

PEO3 – Housing Density

PEO4 – Standards for New Housing

PEO5 – Housing Layout in Tending

PEO7 – Housing Choice

PEO10 – Council Housing

PEO16 – Residential Institutions and Care

PEO18 – Community Facilities

PEO22 – Green Infrastructure in New Residential Development

PEO23 – Children's Play Areas

PLA1 – Development and Flood Risk

PLA3 – Water Conservation, Drainage and Sewerage

PLA5 – The Countryside Landscape

**Other Guidance**

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

Essex Design Guide for Residential and Mixed-Use Areas (2005)

Urban Place Settlement (2007)

**3. Relevant Planning History**

14/30031/PREAPP	Construction of approximately 28 bungalows.	Refused	21.08.2014
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15/00518/ACV	Nominated and recorded on the List of Assets of Community Value held and maintained by Tendring District Council.	10.02.2015
15/01787/FUL	Proposed development of 25 two and three bedroom bungalows.	Current

#### 4. **Consultations**

##### Natural England

4.1 Natural England has no comments to make regarding this application.

##### Anglian Water

4.2 The foul drainage from this development is in the catchment of Manningtree Water Recycling Centre that will have available capacity of these flows. The sewerage system at present has available capacity flows. If the developer wishes to connect to our sewerage network they should serve notice under Section 106 of the Water Industry Act 1991.

##### ECC Highways

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

- Vehicular turning facility for delivery vehicles
- Details of internal estate road junction and visibility splays
- recycling/bin/refuse collection point
- Details of individual proposed vehicular access points
- Pedestrian visibility splay
- No unbound materials
- Details of the estate roads and footways
- Details of off street car parking
- Details for the storage of bicycles
- Construction Method Statement
- Residential Travel Information Pack
- New bus stop (westbound) in the vicinity of the junction with Harwich Road
- New bus stop (eastbound) in the vicinity of the junction with Harwich Road

##### ECC Schools

4.4 To support bungalows, assuming that all of the units have 2 bedrooms or more. A development of this size can be expected to generate the need for up to 1.1 early years and childcare (EY&C) places, 3.7 primary school, and 2.5 secondary school 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 2015, there are 3 providers of early years and childcare in the area. Of these 2 are child minders and 1 is a sessional pre-school. Overall a total of 10 unfilled places were recorded. As there is capacity within the area, a contribution would not be requested.

The proposed development is located within reasonable safe 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 and overall are forecast to have a surplus of 8 places by the school year 2019-20.

This proposed development is located within the secondary education 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.

All of the primary and secondary pupils that would be generated by this development could be accommodated.

However, the County Council is aware that, in addition to this site, outline planning applications have also been submitted for four significant sites in this area:

- 'Bromley Road (Land east of) Lawford - TEN/15/00876/OUT for up to 360 dwellings.
- 'Long Road (land south of) TEN 15/00761/OUT for up to 300 dwellings.
- 'Harwich Road - 15/01520/OUT for up to 135 dwellings
- 'Stourview Close (Land off) - TEN/15/01810/OUT for up to 70 dwellings.

The County Council is aware of the potential cumulative impact on primary and secondary school places in the area if this development is granted planning permission and one, two, three or all of the other developments are also granted planning permission.

Prior to the implementation of the revised Community Infrastructure Levy Regulations on the 6th April 2015 the County Council might have sought a developer contribution from this proposed development for additional primary and secondary school places. However, the implementation of the revised Regulations now restrict the pooling of contributions for a specific item of infrastructure, such as the expansion of a school, to contributions from five separate planning obligations. Under these changed circumstances the County Council has decided not to request a contribution for the provision of additional primary or secondary school places from this proposed development. This is because the scale of this development is relatively small and the impact on pupil places is limited. Seeking a contribution from a small development might, in the future, preclude the County Council from seeking contributions from larger developments in the area.

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.

#### ECC SuDS

4.5 Having reviewed the Flood Risk Assessment and the associated documents which accompanied the planning application, we support the granting of planning permission. The proposed development will only meet the requirements of the National Planning Policy Framework if the following measures as detailed in the FRA and the above mentioned documents submitted with this application are implemented and secured by way of a planning condition on any planning permission. The proposed conditions require:

- A detailed surface water drainage scheme for the site;
- A scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works;
- Maintenance Plan containing the arrangements for maintaining the surface water drainage system; and
- Annual monitoring of maintenance.

## TDC Principal Tree & Landscape Officer

- 4.6 The northern part of the application site is land that was formerly used as allotments with the remainder currently being in agricultural use. Historically the southern part of the application site was set to grass for use as two football pitches.

The site is not well populated with trees. On the western boundary adjacent to the access road to the recreation ground there is a large conifer, probably Cupressocyparis 'Castlewellan'. The tree is a prominent feature and makes a positive contribution to the appearance of the area; there is significant dieback in the growing point and the tree does not merit formal protection by means of a tree preservation order. The tree is situated on the part of the land proposed as public open space and is not threatened by the development proposal.

On the eastern boundary adjacent to the footpath link between Harwich Road and Middlefield Road there is a loosely cohesive group of 3 trees comprising 2 Larch and a single Sycamore. These trees are also situated on the part of the land proposed for public open space and are not threatened by the development proposal. There is also an established hedgerow comprised of an eclectic mix of plant species probably planted by those using the allotments in the past. This feature is not threatened by the development proposal.

There is an attractive and well-established hedgerow, comprising primarily Myrobalan plum, on the boundary of the old allotment land adjacent to the existing informal pedestrian route from Middlefield Road to the access road to the recreation ground. The amenity value provided by this feature could be relatively easily replicated by new planting. The western part of the hedge is shown as retained.

Whilst it may not be necessary for the applicant to submit a full tree survey and report they should provide information to show how retained trees will be physically protected for the duration of the construction phase of any consent that may be granted. This information should be in accordance with BS5837: 2012 Trees in relation to design, demolition and construction, Recommendations.

It would appear that the development proposal could be implemented without causing harm to retained trees.

It will also be necessary for the applicant to recognise the potential impact of the development proposal on the nearby Suffolk Coast and Heaths Area of Outstanding Natural Beauty (AONB) and perhaps more namely the proposed extension to the AONB. Whilst the development proposal is unlikely to have a direct visual impact on the setting of the existing AONB it will be important to ensure that the development does not have such an adverse impact on the local landscape that it compromises the Council's aspiration to secure the proposed extension. Therefore it will be important to ensure that the development is designed and built to a high standard and sits comfortably in its setting.

If the indicative soft landscaping shown on the site layout plan is implemented it would appear that the development could be enhanced and screened by new planting so that it is assimilated into its setting.

Soft landscaping should be secured by a condition attached to any consent that may be granted and will need to address the screening and treatment of the southern boundary, the layout and planting of the proposed open space to the north of the site and planting that forms an integral part of the design and layout of the development.

### TDC Housing

- 4.7 There is a high demand for housing in Mistley. There are currently 65 households seeking a 2 bedroom property and 28 seeking a 3 bedroom property. It is also stated that there is a chronic shortage of 3 bedroom bungalows in the entire district.

The Housing Department is currently deciding its development acquisition priorities and may not be able at this stage to commit to purchase 25% of the provision on this site. As an alternative, the Department would be happy to accept 1 gifted properties (this being 20% of the 25% provision) in order to meet some of the housing demand in this area.

### TDC Open Space

- 4.8 There is currently a deficit of 3 hectares of equipped play/formal open space in Mistley.

Due to the size of the site it is recommended that the site includes play provision to a LEAP standard. Should the developer wish to transfer ownership and maintenance responsibilities for the open space and play area a commuted sum equal to ten years maintenance costs will be required.

### Environmental Health

- 4.9 No objections subject to a condition requiring the submission of a Construction and Demolition of Sites report.

## **5. Representations**

- 5.1 This application has generated some public interest with 7 letters of objection and 2 letters of support being submitted.
- 5.2 The key issues raised in support and objection to the application are summarised below:

### Support

- Gifting of land for allotments and playing fields to the Parish Council

### Objection

- Impact on amenities of new access road into the site
- Uncontrolled access to part of site would result in unsociable behaviour
- Impact on character of the area
- Loss of agricultural land
- Impact on trees
- Outside of settlement boundaries
- Highway safety concerns
- The existing infrastructure including the school, doctors surgery and utilities are already at full capacity and will not be able to function with additional housing growth;
- Lack of affordable housing

- 5.3 Mistley Parish Council despite welcoming the public benefits of the gift of allotment land and playing field area has written in objection to the application. The Parish Council objected to the planning application for the following reasons:

(1) Highway Safety- proposed access to and from the site particularly the point on the western junction of Middlefield Road and Rigby Avenue where evidence of difficulties in manoeuvring larger vehicles is shown by damaged kerbs and verges.

(2) Cumulative Impact - of traffic on busy junction of Pound Comer with Harwich Road and Shrub land Road. The narrow track from the proposed development to the north is unnecessary and would cause considerable congestion and danger to other traffic emerging from Shrubland Road (Village Hall, Secret Bunker, and Shrub land Road residents) as well as from Swan Court. Opposite there is a development of four houses in the grounds of 35 Harwich Road. Under existing plans approved for the Secret Bunker site (12/001 09/FUL) a pedestrian refuge island is shown on that bend which would prevent traffic turning right out of the road.

(3) Planning Policies - This site is outside the village envelope and is not in the development area.

## **6. Assessment**

### **Site location**

- 6.1 The site in total has an area of 4 hectares. It is proposed to develop the 1.3 hectares to the northern part of the site which abuts the existing built up area. The east of the site abuts properties in Middlefield Road and Rigby Avenue. Middlefield Road itself reaching the boundary of this site appears to have been originally arranged to allow an extension into this site.
- 6.2 Middlefield Road and Rigby Avenue is characterised by a mixture of houses and bungalows mostly semi-detached with brick walls under clay tile roofs.
- 6.3 Harwich Road to the north of the site is the 81352 between Mistley and Manningtree to the west. This road serves as a main bus route and is characterised by residential dwellings on either side.
- 6.4 To the south of the site is open countryside and to the west the Village Hall and the former 'Secret Bunker' site.
- 6.5 The site abuts the settlement boundary and is within walking distance of local Shops and the primary school. Mistley Railway Station is about 500m away.
- 6.6 There is a footpath crossing the site which is retained as part of this proposal and are included within the proposed layout. The existing footpath running north/south to the east of the site is not affected by the current proposal.

### **The Proposal**

- 6.7 This application is for the construction of 25 bungalows with associated open space and infrastructure on land to the south of Harwich Road, Mistley including the retention of existing allotment land and the provision of a new playing field. The site was subject of a Pre-Application submission 14/30031/PREAPP.
- 6.8 A Design and Access Statement and detailed drawings have been submitted which demonstrate the layout of the current proposal whilst also providing details of the bungalows being proposed.
- 6.9 The main planning considerations are as follows:
  - Principle of development;
  - Design and density
  - Neighbouring amenity
  - Landscape and visual impact

- Traffic, Access and Highway Safety
- Biodiversity
- Drainage and Flood Risk
- Education
- Affordable housing
- Conclusion

### **Principle of residential development**

- 6.10 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.
- 6.11 The 'development plan' for Tendring is the 2007 'adopted' Local Plan, despite some of its policies being out of date. Paragraph 215 of the NPPF allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 216 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved Objections to relevant policies and the degree of consistency with national policy. The 2012 Local Plan: Proposed Submission Draft, as amended by the 2014 Local Plan: Pre-Submission Focussed Changes, is the Council's 'emerging' Local Plan.
- 6.12 On 25th March 2014, the Council decided that further substantial revisions to the emerging plan will be required before it is submitted to the Secretary of State to be examined by a Planning Inspector. These revisions will aim to ensure conformity with both the NPPF and the legal 'duty to cooperate' relating mainly to issues around housing supply. The separate Local Plan Committee is overseeing this work with a view to a new version of the plan being published for consultation in 2016.
- 6.13 The site is not allocated for housing or mixed use development in either the adopted or emerging Local Plans. The site lies adjacent to the 'settlement development boundary' in both the adopted and emerging Local Plans.
- 6.14 Because the site lies outside of the settlement development boundary and is not allocated for development in either the adopted or emerging Local Plans, this proposal for residential development is contrary to local policy. However, as it stands, both the adopted and emerging Local Plans fall significantly short in identifying sufficient land to meet the objectively assessed need for housing and, as a result, the Council is unable to identify a five-year supply of deliverable housing sites as required by paragraph 47 of the NPPF. In line with paragraph 49 of the NPPF, housing policies are considered to be 'out-of-date' and therefore the government's 'presumption in favour of sustainable development' is engaged. The Council would not be justified therefore in refusing this planning application, at this time, purely on the basis that it lies outside of the settlement development boundary.
- 6.15 It is accepted that the Council cannot demonstrate a deliverable 5 year housing land supply and as a result officers consider that Tendring District Local Plan (2007) Policy QL1, cannot be considered up-to-date as set out in paragraph 49 of the NPPF. This view has also been supported by the Planning Inspectorate in a number of recent appeal decisions for similar outline schemes.
- 6.16 On this basis members should be aware that in the absence of up-to-date policies and a 5 year supply of housing land, development proposals cannot be refused solely on the basis that a site is outside the development boundary. Paragraph 14 of the NPPF sets out that where relevant policies are out-of-date planning permission should be granted unless any

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

- 6.17 Based on the above and having regard to paragraphs 14 and 49 of the NPPF, the presumption in favour of sustainable development carries significant weight and the current scheme falls to be considered against the 3 dimensions of 'sustainable development',
- economic,
  - social; and;
  - environmental roles.

#### Economic Sustainability

- 6.18 Officers consider that the proposal would contribute economically to the area, for example by providing custom for services such as shops and public houses within Mistley. It is also considered that the current scheme if approved would benefit employment locally through the utilisation of local services and tradesmen. It is therefore considered that the scheme could reasonably be considered to meet the economic arm of sustainable development.

#### Social Sustainability

- 6.19 In terms of the social role it is noted that the site is not only well served by bus and rail services, but is also in close proximity to a primary school and playing fields. Further, Mistley includes a number of local facilities including convenience stores, pharmacy, petrol filling station, employment area, garden centre and take-away food stores.
- 6.20 Within the wider area are other facilities such as a secondary school, healthcare facilities and supermarkets. As already noted, the bus and rail services provide ready access to the further services and employment opportunities. Overall, this site has good access to services, facilities and public transport.
- 6.21 It is noted that Manningtree, Lawford and Mistley are together categorised as a 'town' or 'urban settlement' in recognition of their collective size and range of services and facilities and as a location where sustainable development on a larger scale can be achieved.
- 6.22 Approximately 0.4 hectares of land at the northern end of the site is shown in the 2007 adopted Local Plan as protected allotments where Policy COM9 only allows the loss of all or part of an allotment site to development if:
- a) the allotments are replaced by the provision of new allotments at least equal in quality and size and accessible to the community, which the existing allotments serve;
  - b) it is demonstrated that there is no longer a demand for the existing allotments;
  - c) the site is not appropriate for other open space functions; and
  - d) the development of the allotments would not result in the loss of an area important to visual amenity.
- 6.23 Officers understand that there is local demand for allotments in this area and there have been continued representations to the Local Plan from allotment holders requesting the site's continued protection from development. This issue was raised with the applicant at pre-application stage and as a consequence there is a commitment from the applicant to transfer land to the Parish Council for the use as allotments as well as playing fields. These would make a contribution to the local community which is seen as a benefit in terms of the social aspect of sustainable development.
- 6.24 Overall officers consider that the application site performs well in terms of the social role within the definition of sustainability.



### Environmental Sustainability

- 6.25 It is acknowledged that, in terms of settlement shape and form, development in this location is unlikely to have a significantly detrimental impact (subject to consideration against other Local Plan policies) as the site is adjacent to the Settlement Development Boundary in the adopted 2007 Plan.
- 6.26 Given the site's partial containment within the landscape, its edge of settlement location and the number of properties suggested, the density proposed for the application site is acceptable for this location and, as shown through the detailed plans provided, can be achieved through the acceptable layout proposed.
- 6.27 With regard to landscape impact it is noted that the northern part of the application site is land that was formerly used as allotments with the remainder currently being in agricultural use. Historically the southern part of the application site was set to grass for use as two football pitches as a consequence the site is not well populated with trees.
- 6.28 The Council's Principle Tree and Landscape Officer was consulted on the content of the details submitted in support of the application. The officer indicated that the proposal has the potential to impact on the nearby Suffolk Coast and Heaths Area of Outstanding Natural Beauty (AONB) and perhaps more namely the proposed extension to the AONB. Whilst the development proposal is unlikely to have a direct visual impact on the setting of the existing AONB it will be important to ensure that the development does not have such an adverse impact on the local landscape that it compromises the Council's aspiration to secure the proposed extension. As a result it would be imperative to ensure that the development is designed and built to a high standard and sits comfortably in its setting.
- 6.29 The Principle Tree and Landscape Officer concluded that if the indicative soft landscaping shown on the site layout plan is implemented the development could be enhanced and screened by new planting so that it is assimilated into its setting and would not result in material harm to the landscape character of the area. As stated previously a condition to this effect will be attached to any approval.
- 6.30 In addition to the AONB the site is also located within the Coastal Protection Belt. In this regard officers note that this designation has been consolidated in the emerging plan and now excludes the application site.
- 6.31 The applicants have indicated that where feasible the development will provide enhancements for biodiversity within the scheme through the provision of species rich grassland and native species planting.
- 6.32 Based on the above it is considered that the development would be comparable with existing development in the locality without detracting from the AONB or the proposed extension to the AONB. Officers conclude that a more positive approach is justified in this instance to development, as the development of this site can be achieved in keeping with the aims and objectives of National Planning Policy Framework.
- 6.33 The detailed impact upon the Green Gap designation is considered elsewhere in this report.

### Design and Density

- 6.34 The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, indivisible from good planning, and should contribute positively to making places better for people. One of the core planning principles of The Framework as stated at paragraph 17 is to always seek to secure high quality design.

- 6.35 Policies QL9, QL10 and QL11 of the Saved Plan to ensure that all new development makes a positive contribution to the quality of the local environment, relates well to its site and surroundings particularly in relation to its form and design and does not have a materially damaging impact on the amenities of occupiers of nearby properties. Policy SD9 of the Draft Plan, whilst of limited weight carries forward the sentiments of these saved policies stating that all new development must make a positive contribution to the quality of the local environment and protect or enhance local character.
- 6.36 The development is for 100% bungalows which would be contrary to the Council's policy in the emerging Local Plan (PE014) which only allows single-storey housing on developments of 10 or more dwellings on selective development plots immediately adjoining the curtilage of existing bungalows where taller properties would raise concerns about overlooking and loss of light or if the form part of a retirement village or extra-care housing scheme.
- 6.37 However, it is acknowledged that this policy is subject to objections and does not reflect the advice in the NPPF to deliver a range of housing to meet identified needs. Given the limited weight that can be attributed to this policy, the Councils identified housing shortfall as well as the Council's Housing Departments indication that there is critical shortfall in the number of bungalows across the district officers conclude that a reason for refusal based on the failure to comply with Policy PEO14 could not be substantiated in this instance.
- 6.38 There is also a small area for other highway infrastructure for the connections to and between the development areas.
- 6.39 The design of the new bungalows reflects some of the architectural characteristics typical of the area with proposed materials reflecting similar materials used in the immediate vicinity. Specific details in this regard will be secured by condition attached to any approval.
- 6.40 The proposed dwellings have been set back from the road which allows for the planting of trees and landscaped areas along the frontage which would serve to enhance the character and appearance of the development whilst also reflecting the edge of settlement location of the site. Details of the landscaping as presented within the application will be secured through a planning condition ensuring the delivery of a high quality development that reflects and contributes to the character and appearance of the area.
- 6.41 With regard to the amenities of future residents it is noted that the spacing between dwellings would reflect the local context whilst garden sizes are in excess of the Council's adopted policy requirements under Saved Policy HG9. In addition the residential density proposed would be 19 units per hectare which would further reflect the character of the area.

### **Neighbouring Amenity**

- 6.42 The NPPF, in paragraph 17 states that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. In addition, Policy QL11 of the Tendring District Local Plan (2007) states that amongst other criteria, 'development will only be permitted if the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties'. Policy SD9 of the Tendring District Local Plan Proposed Submission Draft (2012) supports these objectives and states that 'the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties'.
- 6.43 The residential scheme proposed would in places back onto the existing properties facing onto Rigby Avenue. It is considered that, given the garden depths and separation distances proposed in combination with the overall scale, bulk and massing of the

residential dwellings, there would be no harmful loss of amenity to any of the adjoining neighbours as a result of overbearing development or loss of light.

- 6.44 In addition it is noted that the roof spaces of the individual properties have been designed to allow storage but no provision is being made for conversion of these spaces to living accommodation. Any conversion of these areas will be controlled by planning condition in order to manage any potential issues with overlooking in the future.
- 6.45 The landscaping details submitted as part of the application shows significant landscaping along the boundaries of the site would further serve to screen the proposed development from the adjoining residential dwellings reducing potential impacts on amenity.
- 6.46 Concerns have been raised with regard to the noise and disturbance that could be generated by the new access road in close proximity to the residential dwelling at Pound Corner. Whilst it is accepted that there would be some level of noise and disturbance generated it is noted that there is an existing gated access into the site in a similar location as being proposed as part of the current scheme.
- 6.47 Officers note the proposed development would share traffic between two access points which could reduce the frequency with which each of these accesses are used. In addition it is considered that the proposed development for 25 bungalows would only generate traffic peaks over a short period during the peak hours.
- 6.48 Finally, there would be the possibility to secure further landscaping or suitable boundary treatments along the boundary with the property at Pound Corner to further reduce any potential noise generated by the new access road.
- 6.49 Given the above officers conclude that on balance the new access whilst resulting in some noise and disturbance, would due to the factors highlighted above, not result in levels of noise and disturbance that would be materially harmful to the amenities of the occupiers of the property at Pound Corner.

#### **Landscape Impact & Visual Impact**

- 6.50 The application site is not located in or close to any area of land defined as local, national or international protected sites, however there are some site specific characteristics to be considered.

#### **Local Green Gap, AONB and Coastal Protection Belt**

- 6.51 The site is located within the Green Gap, and outside of the defined settlement limits of the village, as depicted in both adopted and emerging Local Plans. Policy EN2 of the Adopted Local Plan (2007) states that the primary purpose and function of the Green Gap is to maintain physical separation between different settlements or neighbourhoods and avoid developments that would result in them merging together and losing their individual identities.
- 6.52 These gaps have been carefully defined in specific locations where there is a genuine risk, due to the close proximity of settlements or neighbourhoods, that any development approved could undermine (in whole or in part) the remaining undeveloped gap and jeopardise those settlements individual identities.
- 6.53 The Planning Committee has resolved to refuse a number of planning applications for being contrary to adopted Local Green Gap policy including 15/01234/OUT for 240 dwellings off Halstead Road, Kirby Cross; 15/00904/OUT for 240 dwellings off Rush Green Road, Clacton; 15/00964/OUT for 71 dwellings off Mayes Lane, Ramsey; and 15/01710/OUT for

110 dwellings off Thorpe Road, Kirby Cross.

- 6.54 The Council has also now received two appeal decisions for Local Green Gap sites. The first relates to an outline planning application for up to 60 dwellings on land north of Harwich Road, Little Oakley (Ref: 14/00995/OUT) and the second relates to an outline application for up to 75 dwellings on land east of Halstead Road, Kirby-le-Soken (Ref: 15/00928/OUT). Both appeals were dismissed with both Planning Inspectors concluded that the emerging Local Plan should carry only limited weight and that, critically, Policy EN2 in the adopted Local Plan is not a housing policy and should carry 'full weight'. The Inspector stated *"this policy aims to keep Local Green Gaps open and free of development, to prevent the coalescence of settlements and to protect their rural settings. This is compatible with the aim of the Framework, as set out in paragraph 17, to recognise the intrinsic character and beauty of the countryside and to protect valued landscapes. Consequently I have attached full weight to LP Policy EN2 in determining this appeal"*.
- 6.55 However, there has since been a decision by 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 green gap 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.
- 6.56 Notwithstanding the appeal decisions at Little Oakley and Kirby-le-Soken, the implication of this legal ruling is that the Council cannot simply refuse planning permission for development within Local Green Gaps on the basis that the Local Green Gap policy should carry 'full weight'. Instead, the Council must apply the key test within the NPPF to determine whether or not the adverse impacts of development would significantly and demonstrably outweigh the benefits – weighing up the presence of the Local Green Gap policy in the overall planning balance.
- 6.57 Applying this balanced approach to the current scheme officers consider that the site is bounded to the east, west and north by existing urban development which forms a natural buffer that will limit further incremental expansion. Consequently officers are of the opinion that the proposed development in this instance would not result in the coalescence of settlements or neighbourhoods that could result in them losing their individual identities. A significant physical gap can still be maintained to the south and further to the west beyond the existing playing fields.
- 6.58 The land in question in officers opinion does not contribute toward the intrinsic beauty of the open countryside in the same way that many green gap sites do and, on balance, officers conclude that the adverse impact of losing this area of land to development would not undermine the function of the Local Green Gap policy and would significantly or demonstrably outweigh the benefits of the development in terms of housing supply.
- 6.59 With regard to the potential impact on the proposed Suffolk Coast and Heaths AONB extension, the Council's Principle Tree and Landscape Officer indicated that if the indicative soft landscaping shown on the site layout plan is implemented it would appear

that the development could be enhanced and screened by new planting so that it is assimilated into its setting.

- 6.60 Should members be minded to approve the current scheme a condition will be attached to secure the levels of soft landscaping as indicated on the plans submitted in support of the application.
- 6.61 In addition the 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.
- 6.62 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.
- 6.63 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.
- 6.64 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 and other land south of Harwich Road.
- 6.65 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.
- 6.66 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. The site is separated from the exposed undeveloped coast by the existing development in Mistley, including at Rigby Avenue and the properties north of Harwich Road. On the basis that development in this location and on this site is unlikely to have a detrimental impact, 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.

### **Traffic, access and highway safety**

- 6.67 The proposed development would be served by two access points. The first access would be a 5.8m wide shared surface from Harwich Road and would follow a similar route as an existing access track. The second access would be from Middlefield Road and would be 5.6m in width with 2m wide footpaths on either side.
- 6.68 Essex County Council Highways were consulted on the details submitted in support of the application. Their response indicated no objection to the access points identified for the current proposal subject to a number of controlling conditions. It was also suggested that two new bus stops should be provided along the eastern and western sides of Harwich Road. These stops will be secured through a section 106 agreement should members be minded to approve the proposed development.
- 6.69 Some representations from residents indicate concerns about the wider effects of additional vehicle movements on local traffic, highway capacity and pedestrian safety.
- 6.70 Paragraph 4 of the NPPF sets out the criteria for promoting sustainable transport and in this regard stipulates in Paragraphs 34 to 36 how this should be approached. The overall aims and objectives of the NPPF are supported by Policies contained within Chapter 7 of the Tendring District Local Plan (2007) as well as by Policies SD8 and PEO4 of the draft Local Plan.
- 6.71 Paragraph 34 indicates that decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised.
- 6.72 Paragraph 35 further requires that plans should protect and exploit opportunities for the use of sustainable transport modes for the movement of goods or people. Therefore, developments should be located and designed where practical to:
- accommodate the efficient delivery of goods and supplies;
  - give priority to pedestrian and cycle movements, and have access to high quality public transport facilities;
  - create safe and secure layouts which minimise conflicts between traffic and cyclists or pedestrians, avoiding street clutter and where appropriate establishing home zones;
  - incorporate facilities for charging plug-in and other ultra-low emission vehicles; and,
  - consider the needs of people with disabilities by all modes of transport.
- 6.73 Paragraph 37 stipulates that there should be a balance of land uses within the area so that people can be encouraged to minimise journey lengths for employment, shopping, leisure, education and other activities.
- 6.74 Policy QL10 of the Saved Plan states that planning permission will only be granted, if amongst other things, access to the site is practicable and the highway network will be able to safely accommodate the additional traffic the proposal will generate. This requirement is also carried forward to Policy SD9 of the draft Local Plan.

- 6.75 Having considered the details submitted and the comments received from Essex County Council Highways officers conclude that the development, subject to the proposed conditions, would meet the requirements of Policy TR1a of the adopted Local Plan and the element of Policy SD8 in the emerging Local Plan relating to highway capacity and safety. It would also meet paragraph 32 of the NPPF which states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.
- 6.76 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 garage, if being relied on to provide a parking space should measure 7 metres by 3 metres internally. The applicants have indicated that the proposed development complies with these standards.
- 6.77 Based on the above it is considered that the proposed development can provide safe and adequate means of access to the site whilst the scheme could also comply with the aims and objectives of the NPPF as well as Local Plan Policies with regard to highway safety and parking requirements.

### **Biodiversity**

- 6.78 Some representations raised concerns about the potential impacts on wildlife resulting from the proposed development.
- 6.79 Policies within Chapter 6 of the Tendring District Local Plan (2007) and Policy PLA4 of the Tendring District Local Plan Proposed Submission Draft (2012) as amended seek to ensure that where development is likely to harm nature conservation or geo-diversity interests, planning permission will only be granted in exceptional circumstances. The benefits of the development should clearly outweigh the harm caused and where appropriate mitigation measures must be incorporated into the development to the satisfaction of Natural England and other relevant Authorities

### **Ecological Designations**

- 6.80 The nearest designated site is the Stour and Orwell Estuary which is designated as a RAMSAR, Site of Special Scientific Interest (SSSI) and Special Protection Area( SPA) located 500m north of the site.
- 6.81 The Ecological Appraisal completed in support of the application concluded that the RAMSAR, SSSI and SPA is separated from the application site by residential development and roads, and is not in direct habitat connectivity with the site. As a result the development will not impact upon these designated sites.
- 6.82 It is considered unlikely, given the distance from the scale of the proposed development that the sites with non-statutory protection will be directly affected by the proposed construction activity and development on the surveyed area.
- 6.83 Natural England raised no objection to the scheme.

### **Habitats**

- 6.84 The site mainly consists of former allotments to the north of the site which are now overgrown with semi-improved grassland and sporadic patches of tall ruderal vegetation and scattered scrub. A species-rich hedge borders the western boundary as well as cutting across the site from west to east. This separates the former allotments from the arable field to the south of the site.

- 6.85 A strip of semi-improved grassland also borders the arable field.
- 6.86 Small rubble piles are present within the northern semi-improved field margin. Common Lizard were noted to be using these piles.
- 6.87 Scattered trees are present.
- 6.88 The applicants have indicated that where feasible the development will provide enhancements for biodiversity within the scheme through the provision of species rich grassland and native species planting.

### **Protected Species**

- 6.89 The site was not found to be suitable for Great Crested Newt, Water Voles, Otters, Dormice or assemblages of invertebrates of conservation concern.
- 6.90 No setts or field signs were noted on site as part of this survey.
- 6.91 The Preliminary Ecological Survey indicated that there are suitable features, within the area to be affected by the proposed development, which may provide foraging and breeding habitat for protected species, in particular:
- The hedgerows and trees provide suitable nesting habitat for breeding birds during the breeding season;
  - The habitats on site are considered suitable foraging habitat for bats;
  - The grassland appears highly suitable for reptiles with four Common Lizard noted within the walkover alone.
- 6.92 In response to the above the preliminary survey suggested that further surveys would be required with regard to bats and reptiles. In response the applicants commissioned a further Bat Activity and Reptile Survey.

### **Bat Survey**

- 6.93 The bat foraging assessment was carried out in order to establish the current status of bats in habitats to be affected by proposed development at the site.
- 6.94 This included a transect survey which was undertaken on two separate dusk surveys between 22 July and 3 August 2015, during which three species of bat were encountered on the site. The main areas of activity included the southern boundary connecting to adjacent woodland and the western boundary hedgerows.
- 6.95 The species assemblage and numbers observed are considered to be of site importance only.
- 6.96 Given the findings of the survey it is being recommended that as much habitat for bats as possible, is retained in the final development. This should include the retention of the hedgerow along the western boundary, and replacement of any hedgerows to be lost. In addition any future lighting for the scheme should be designed to minimise the potential impacts on bats.

### **Reptiles**

- 6.97 With regard to reptiles a survey was carried out in order to establish the status of reptiles in habitats to be affected by proposed development at the site.



- 6.98 Common Lizard were found on site on 9 out of the 10 days, mostly under the mats along the western hedgerow. The maximum reptile count was 10 adults during one survey, which indicates a good population of local importance.
- 6.99 Based upon these numbers it is estimated that the site supports a medium population of Common Lizard across the entire site. However the land to be developed for residential purposes would likely support a low population of Common Lizard based on the lower number of adults noted within this area during the survey. The southern half of the site which is to be gifted to the council, would still support a medium population of Common Lizard.
- 6.100 Given the findings of this survey it is concluded that a full detailed mitigation strategy should be prepared and submitted to the Local Planning Authority for agreement.
- 6.101 The recommendations of the Bat Activity and Reptile Survey prepared by Geosphere Environmental Ltd and dated 2<sup>nd</sup> September 2015 will be secured by planning condition should Members be minded to approve the application.
- 6.102 Given the site's previous use and proximity to the wider countryside to the north, and in accordance with paragraph 118 of the NPPF, this application provides opportunities to incorporate features into the design which are beneficial to wildlife. Such ecological enhancement opportunities will be secured by condition.

#### **Drainage and Flood Risk**

- 6.103 The National Planning Policy Framework makes it clear that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, it should be made safe without increasing flood risk elsewhere. Accordingly, Policy QL3 of the Tendring District Local Plan (2007) and PLA1 of the Tendring District Local Plan Proposed Submission Draft (2012) have been informed by these national policy requirements, the findings of Strategic Flood Risk Assessments (SFRA) and advice from the Environment Agency.
- 6.104 The applicants have submitted a Flood Risk Assessment as part of the application which highlights the fact that with reference to the Environment Agency Flood Maps indicate that the site is located within Flood Zone 1.
- 6.105 Anglian water in their consultation response indicated that the foul drainage from this development is in the catchment of Walton on the Naze Water Recycling Centre that will have available capacity for these flows.
- 6.106 With regard to surface water disposal Anglian Water indicated that the proposed method of surface water management does not relate to Anglian Water operated assets. It was suggested that the Council should seek the advice of the Lead Local Flood Authority. In response to their consultation Essex County Council SUDS Authority have stated that the updated Flood Risk Assessment and associated documents which accompanied the planning application is acceptable and that this body has no objection to the current scheme. It was further suggested that a number of conditions be attached to any approval to ensure that the proposed development meets the requirements of the National Planning Policy Framework. These can be summarised as follows:
- Detailed surface water drainage scheme for the site, based on the revised FRA and Drainage strategy
  - Scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works
  - Maintenance Plan detailing the maintenance arrangements with regard to surface water drainage system

- Responsible body for maintenance of the surface water drainage system must record yearly logs of maintenance in accordance with approved Maintenance Plan.

6.107 With regard surface water flooding Essex County Council SuDS indicated that the proposed development will meet the requirements of the National Planning Policy Framework if the measures as detailed in the FRA and associated documents submitted in support of the application implemented. On this basis officers have attached a number of conditions to secure these submitted details.

6.108 Based on the details contained within the FRA and Drainage Strategy it is considered that the application site could be developed in the manner proposed without any risk of flooding from or to the proposed development compliant with the aims and objectives of the NPPF as well as Local Plan Policies set out above.

### **Education**

6.109 Local Plan Policies QL12 of the Tendring District Local Plan (2007) and SD7 of the Tendring District Local Plan Proposed Submission Draft (2012) sets out that the Council will seek planning obligations wherever they are fairly and reasonably related in scale and kind to the proposed development.

6.110 To support bungalows, assuming that all of the units have 2 bedrooms or more. A development of this size can be expected to generate the need for up to 1.1 early years and childcare (EY&C) places, 3.7 primary school, and 2.5 secondary school places.

6.111 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 2015, there are 3 providers of early years and childcare in the area. Of these 2 are child minders and 1 is a sessional pre-school. Overall a total of 10 unfilled places were recorded. As there is capacity within the area, a contribution would not be requested.

6.112 The proposed development is located within reasonable safe 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 and overall are forecast to have a surplus of 8 places by the school year 2019-20.

6.113 This proposed development is located within the secondary education 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.

6.114 All of the primary and secondary pupils that would be generated by this development could be accommodated.

6.115 However, the County Council is aware that, in addition to this site, outline planning applications have also been submitted for four significant sites in this area:

- 'Bromley Road (Land east of) Lawford - TEN/15/00876/OUT for up to 360 dwellings.
- 'Long Road (land south of) TEN 15/00761/OUT for up to 300 dwellings.
- 'Harwich Road - 15/01520/OUT for up to 135 dwellings
- 'Stourview Close (Land off) - TEN/15/01810/OUT for up to 70 dwellings.

6.116 The County Council is aware of the potential cumulative impact on primary and secondary school places in the area if this development is granted planning permission and one, two, three or all of the other developments are also granted planning permission.

6.117 Prior to the implementation of the revised Community Infrastructure Levy Regulations on the 6th April 2015 the County Council might have sought a developer contribution from this

proposed development for additional primary and secondary school places. However, the implementation of the revised Regulations now restrict the pooling of contributions for a specific item of infrastructure, such as the expansion of a school, to contributions from five separate planning obligations. Under these changed circumstances the County Council has decided not to request a contribution for the provision of additional primary or secondary school places from this proposed development. This is because the scale of this development is relatively small and the impact on pupil places is limited. Seeking a contribution from a small development might, in the future, preclude the County Council from seeking contributions from larger developments in the area.

- 6.118 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.

### **Affordable Housing**

- 6.119 Saved Policy HG4 requires up to 40% of dwellings to be affordable housing on sites of 15 or more dwellings in urban settlements (with a population of 3,000 or more) and on sites of 5 or more dwellings in rural settlements (with a population less than 3,000). The National Planning Policy Framework requires Councils to consider economic viability when it applies its policies and the Council's own 2013 viability evidence in support of the Local Plan demonstrates that 40% affordable housing is unlikely to be viable in Tendring and that between 10% and 25% (as contained within emerging Policy PEO10) is more realistic. The thresholds under Saved Policy HG4 will therefore be applied but the percentage will be between 10% and 25% as detailed under emerging Policy PEO10.
- 6.120 There is a high demand for housing in Mistley. There are currently 65 households seeking a 2 bedroom property and 28 seeking a 3 bedroom property. It is also stated that there is a chronic shortage of 3 bedroom bungalows in the entire district.
- 6.121 The Housing Department is currently deciding its development acquisition priorities and may not be able at this stage to commit to purchase 25% of the provision on this site. As an alternative, the Department would be happy to accept 1 gifted properties (this being 20% of the 25% provision) in order to meet some of the housing demand in this area.

## **7 Conclusion**

- 7.1 The application site is situated adjacent to the built-up area of Mistley the town or Urban Settlement of Manningtree, Lawford and Mistley which is recognised in planning policies as a location for growth. The current scheme results in a natural extension of the existing pattern of urban development.
- 7.2 Officers are of the view that current scheme would deliver notable benefits especially in addressing the Councils housing shortfall while also contributing to the provision of community facilities in the form of allotments and playing fields that are to be transferred to the Parish Council.
- 7.3 Notwithstanding the benefits of the scheme the balanced approach promoted by the NPPF also requires consideration of any potential harm as a result of development proposals. In this instance officers considered that the extent of potential harm would be limited to the impacts on the Green Gap designation, AONB, surface water flooding, impacts on the character of the area, impacts on neighbouring occupiers and highway safety matters. However in officer's opinion the applicant has provided evidence as part of their submission which indicates that the proposal would not result in any adverse impacts to the receptors identified above.

7.4 Based on the above it is concluded that there are no material conflicts with planning policy and since no material objections have been raised that outweigh the benefits of the proposed development the application is recommended for approval subject to a Section 106 legal agreement and a number of controlling conditions.

Background Papers

None.