

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	MP	11/04/19
Planning Development Manager authorisation:	AN	16/4/19
Admin checks / despatch completed	AP	17/4/19

Application: 19/00303/FUL **Town / Parish:** Mistley Parish Council

Applicant: Mr R Giddings

Address: Morschach 52 New Road Mistley

Development: Erection of 2 bungalows and alterations to No. 52 New Road together with access and ancillary works.

1. Town / Parish Council

Mistley Parish Council

At its Meeting on the 21st March 2019 the Planning Committee of the Parish Council wished to reiterate its previous observations that this proposal should be refused. The proposal is outside of the Village envelope, it is over-development, there are issues with onsite parking, there would be overlooking the playground and the historic Welcome Home Field, the issue of the egress onto New Road as there is a bend with vehicles travelling at speed and (no traffic speed survey) was submitted and also current levels of on road parking restricts vision for the numbers of vehicles (including service vehicles), coming from 8 properties. There are no changes or improvements to this scheme which would change the Parish Council's view for this particular proposal. The application should be "called in" and considered by the LPA's Planning Committee.

2. Consultation Responses

ECC Highways Dept

PLEASE NOTE: The following comments are made having regard to plan number SK04

A site visit has been undertaken and the information that was submitted in association with the application has been fully considered by the Highway Authority. The application is connected with previous application: 17/01183/FUL. The proposal is located off New Road which is subject to a 30-mph speed limit. The proposal allows adequate room and provision for off street parking and turning, for the proposed and existing dwellings therefore:

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 the first occupation of the development, the proposed road junction at its bell mouth junction with The Street shall be constructed at right angles to the highway boundary and to the existing carriageway as shown in principle Plan, SK04 to a carriageway width of 5.5 metres straight for at least the first 10 metres with 2 metre width footway on both sides with the proposed footway to connect to the

existing footway at its junction with The Street.

Reason: To ensure that all vehicular traffic using the junction may do so in a controlled manner and to provide adequate segregated pedestrian access, in the interests of highway safety and in accordance with Policy DM1 and DM6.

2. Prior to occupation of the development, the access at its centre line shall be provided with clear to ground visibility splays, excepting the Sycamore and Lime trees, with dimensions of 2.4 metres by 5.4 metres in both directions, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the access is first used by vehicular traffic and retained free of obstruction at all times.

Reason: To provide adequate inter-visibility between vehicles using the road junction / access and those in the existing public highway in the interest of highway safety in accordance with policy DM1.

3. Prior to the first occupation of the development, the proposed access drive shall be constructed as a shared use surface with a width of no less than 6 metres to the satisfaction of the Local Planning Authority.

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

4. No unbound materials shall be used in the surface treatment of any proposed 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.

5. There shall be no discharge of surface water onto the Highway.

Reason: To prevent hazards caused by water flowing onto the highway and to avoid the formation of ice on the highway in the interest of highway safety to ensure accordance with policy DM1.

6. Prior to first occupation of the development the size 3 vehicular turning facility shown in principle in the Block Plan, 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.

7. Any new boundary planting shall be planted a minimum of 1 metre back from the highway boundary and any visibility splay.

Reason: To ensure that the future outward growth of the planting does not encroach upon the highway or interfere with the passage of users of the highway, to preserve the integrity of the highway and in the interests of highway safety and in accordance with Policy DM1.

8. Each vehicular parking space shall have minimum dimensions of 2.9 metres x 5.5 metres.

Reason: To ensure adequate space for parking off the highway is provided in the interest of highway safety in accordance with Policy DM8

9. Cycle parking shall be provided in accordance with the EPOA Parking Standards. The approved facility shall be secure, convenient, covered and provided prior to first occupation and retained at all times.

Reason: To ensure appropriate cycle parking is provided in the interest of highway safety and amenity in accordance with Policy DM8.

10. Prior to occupation of the proposed dwelling, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport, approved by Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator.

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport in accordance with policies DM9 and DM10.

11. Prior to first occupation the proposed measures as shown on the submitted plan SK04 shall be provided entirely at the Developer's expense.

Reason: In the interest of highway safety to in accordance with policy DM1.

Note: This condition requires a Legal Agreement between the Applicant/Developer and the Highway Authority using the powers in Section 278 of the Highways Act, 1980

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: Steps should be taken to ensure that the Developer provides sufficient turning and off-loading facilities for delivery and site worker vehicles, within the limits of the site together with an adequate parking area for those employed in developing the site.

Informative 2: 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 3: 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.

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.

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.

Historic Environment

The application is for the erection of 2 bungalows and alterations to No. 52 New Road together with access and ancillary works. The main heritage asset for consideration is the Manningtree and Mistley Conservation Area.

The information provided with the application is limited and it has been assumed that the proposed building will not impact upon views within or towards the conservation area.

The form of development is considered to cause some limited harm to the significance of the conservation area. Historic development in this part of the conservation area has typically fronted to the road with no 'backland' housing. As such this form of development is considered incongruous with that on the south side of New Road, adding density to an area which has typically been more open with road fronting properties which are afforded long rear plots. The new road and built form is considered equally harmful in this regard.

The limited harm identified is considered less than substantial and therefore paragraph 196 of the NPPF is relevant.

Essex County Council Archaeology

The above planning application has been identified as having the potential to harm non-designated heritage assets with archaeological interest.

The proposed site lies within a Conservation Area and historic settlement of Manningtree. Manningtree is of considerable archaeological and historical importance, as an example of a small market town which contains elements of both a sea-port and an industrial town that retains its medieval street-pattern and parts of the medieval and early post-medieval built environment.

The proposed site lay beyond the original Medieval town and on the outskirts of the postmedieval expansion areas where industrial sites and related activity were located. In the early nineteenth century Manningtree was a major centre of the Essex malt industry with five separate sites in operation. The Lawford Works was also a major employer with three complexes producing leather and iron goods on the west side of the town. This industrial activity necessitated the construction of small terraces of worker's housing and more substantial managers' dwellings. In the late nineteenth century the erection of the huge Mistley maltings in the neighbouring parish effectively eclipsed the production of malt in Manningtree and parts of the Lawford Works appear to have gone into decline about the same time. The site lies within an enclosed area marked as Gresham Place

which is depicted on the 1st edition OS maps and may be earlier in origin.

Further evidence for post medieval and later activity associated with the settlement may survive within the site.

The following recommendations are made in line with the Department for Communities and Local Government National Planning Policy Framework:

RECOMMENDATION: A Programme of Archaeological evaluation

1. No development or preliminary ground-works can commence until a programme of archaeological evaluation has been secured and undertaken in accordance with a Written Scheme of Investigation, which has been submitted by the applicant, and approved by the planning authority. Following the completion of this initial phase of archaeological work, a summary report will be prepared and a mitigation strategy detailing the approach to further archaeological excavation and/or preservation in situ, shall be submitted to the local planning authority.
2. No development or preliminary groundwork can commence on those areas of the development site containing archaeological deposits, until the satisfactory completion of archaeological fieldwork, as detailed in the mitigation strategy, which has been signed off by the local planning authority.
3. Following completion of the archaeological fieldwork, the applicant will submit to the local planning authority a post-excavation assessment (within six months of the completion date, unless otherwise agreed in advance with the planning authority), which will result in the completion of post-excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

Further Recommendations:

A professional team of archaeologists should undertake the archaeological work. In the first instance a programme of trial trenching investigation will be required. A brief outlining the level of archaeological investigation will be issued from this office on request. Tendring District Council should inform the applicant of the recommendation and its financial implications.

UU Open Spaces

Response from Public Realm
Open Space & Play

Application Details

Application No: 19/00303/FUL

Site Address: Morschach 52 New Road Mistley Essex

Description of Development: Erection of 8 No. apartments and alterations to No. 52 New Road together with access and ancillary works

Current Position

There is currently a deficit of -3.00 hectares of equipped play/formal open space in Mistley.

Closest play areas to the development site is located at The Welcome Home Field 0.1 miles from the proposed development this play area is classified as Local Equipped Areas for But provides limited provision and is in need of up dated Recommendation

Due to the significant lack of facilities in the area if it felt that a contribution towards play and formal open space is justified and relevant to this planning application.

The contribution would be used towards up grading existing equipment at Welcome Home Field, Mistley

Building Control and Access Officer

No comments at this time.

Waste Management

No comments.

Environmental Protection

I have reviewed the application and have the following comments to make;

I have reviewed the noise assessment report, the noise from road traffic and the railway has been identified as the most significant noise source. The proposed mitigating measures mentioned in the report must be adhered to.

The land contamination report shows no indication of contamination although an observation strategy is recommended during any groundwork. Any contamination seen at the time of groundworks should be recorded, remediated and a closure report with photographic evidence sent to environmental protection.

In addition to the above, an asbestos survey should be carried out prior to any demolition and removal of any asbestos containing material should be carried out by a qualified contractor

In order to minimise potential nuisance to nearby existing residents caused by construction works, Pollution and Environmental Control ask that the following is conditioned;

Prior to the commencement of any construction works, the applicant (or their contractors) shall submit a full method statement to, and receive written approval from, the Pollution and Environmental Control.

' Noise Control

1) The use of barriers to mitigate the impact of noisy operations will be used where possible.

2) No vehicle connected with the works to arrive on site before 07:30 or leave after 19:00 (except in the case of emergency).

Working hours to be restricted between 08:00 and 18:00 Monday to Saturday (finishing at 13:00 on Saturday) with no working of any kind permitted on Sundays or any Public/Bank Holidays.

3) The selection and use of machinery to operate on site, and working practices to be adopted will as a minimum requirement, be compliant with the standards laid out in British Standard 5228:2014.

4) Mobile plant to be resident on site during extended works shall be fitted with non-audible reversing alarms (subject to HSE agreement).

5) Prior to the commencement of any piling works which may be necessary, a full method statement shall be agreed in writing with the

Planning Authority (in consultation with Pollution and Environmental Control). This will contain a rationale for the piling method chosen and details of the techniques to be employed which minimise noise and vibration to nearby residents.

6) If there is a requirement to work outside of the recommended hours the applicant or contractor must submit a request in writing for approval by Pollution and Environmental Control prior to the commencement of works.

Emission Control

1) All waste arising from the ground clearance and construction processes to be recycled or removed from the site subject to agreement with the Local Planning Authority and other relevant agencies.

2) No materials produced as a result of the site development or clearance shall be burned on site. All reasonable steps, including damping down site roads, shall be taken to minimise dust and litter emissions from the site whilst works of construction and demolition are in progress.

3) All bulk carrying vehicles accessing the site shall be suitably sheeted to prevent nuisance from dust in transit.

Adherence to the above condition will significantly reduce the likelihood of public complaint and potential enforcement action by Pollution and Environmental Control. The condition gives the best practice for Demolition and Construction sites. Failure to follow them may result in enforcement action under nuisance legislation (Environmental Protection Act 1990), or the imposition of controls on working hours (Control of Pollution Act 1974).

Tree & Landscape Officer
(Dated 6 March 2019)

As the application site is situated in the Mistley and Manningtree Conservation Area all trees with a stem diameter greater than 75mm at 1.5m from ground level are afforded formal legal protection.

In order to assess the extent to which the trees are a constraint on the development of the land the applicant has provided a Tree Survey Plan and Schedule of Trees. They have not submitted a full tree survey and report although the trees are accurately plotted and described in the information provided. The information is in accordance with BS5837: 2012 Trees in relation to design, demolition and construction: Recommendations.

The report accurately describes the health and condition of the trees on the land and shows the extent of the constraint that they exert on the development potential of the land.

The applicant has also provided a site layout and block plan showing the positions of the proposed dwellings along with access and parking arrangements. Although this plan shows the positions of the trees it does not show the RPA's so it cannot be used to assess the impact of the development on the trees on the land.

In order to show the impact of the development proposal on the trees the applicant should provide a plan showing both the arrangement of the proposed development and the RPA of the trees. It will also be necessary to identify the way that retained trees would be physically protected for the duration of the construction phase of the development

At the present time the information provided does not demonstrate that the development proposal can be implemented without causing harm to the trees on the land.

In terms of the impact of the development on the character and appearance of the conservation area the introduction of the built form in the rear garden of the existing dwelling (54 New Road) will have an urbanising impact on local environs and consequently on the use and enjoyment of the Welcome Home Playing Field. The development proposal is not in keeping with the local settlement pattern

Tree & Landscape Officer
(Dated 19 March 2019
following the submission
of a plan showing the
Root Protection Areas of
trees on site)

Notwithstanding previous comments.

Please note that my earlier comments did not say that I was content with the information previously provided:- only that the tree report showed the extent of the constraint of the trees on the land. It did not show the impact of the development on them

The plan now provided by the applicant shows a significant incursion into The Root Protection Areas (RPA's) of T2, T3, T4 and T5. This has the potential to cause harm to the trees which are important features in their setting and in the conservation area. If planning permission is likely to be granted then a condition should be attached to secure detail of 'No-Dig' construction for any works within the RPA's of the protected trees. Traditional construction techniques will not be acceptable.

In terms of the relationship between the retained trees and the proposed dwellings it appears that T13 and T14 will be very close to the north-eastern side of the unit 2. Taking into account the issues that are likely to arise associated with leaves and debris falling from the tree onto the dwelling and in the garden, as well the obstruction to daylight, it does not appear that a satisfactory juxtaposition between the retained trees and the new dwellings has been achieved.

Historic England

Thank you for your letter of 28 February 2019 regarding the above application for planning permission. On the basis of the information available to date, we do not wish to offer any comments. We suggest that you seek the views of your specialist conservation and archaeological advisers, as relevant.

It is not necessary for us to be consulted on this application again, unless there are material changes to the proposals. However, if you would like detailed advice from us, please contact us to explain your request.

3. Planning History

00/00356/TCA	Fell Ash, Pollard Sycamore and balance crown of Hornbeam in front garden; Lime - remove spicormic growth, 2 Sweet Chestnuts repair storm damage/balance crown, 25% reduction to Beech and to prune Sycamores	Approved	07.04.2000
12/00592/TCA	Rear garden - 1 No. Beech - crown reduce by 30%, 1 No. Pine (cedar) - fell as affecting the Beech. Front	Approved	26.06.2012

garden - 2 No. Sycamore - crown reduce by 35 - 40%, 1 No. Magnolia - fell - too close to house, 1 No. Lime - reduce and balance by 35 - 40%

14/00254/TCA	Per aerial view plan - front of property, T1 - remove top heavy lean. T2 - reduce by 40%. T3 - reduce by 40%. Rear of property, T4 - fell.	Approved	27.03.2014
17/01183/FUL	Erection of 8 No. apartments and alterations to No. 52 New Road together with access and ancillary works.	Refused (Dismissed at appeal)	02.11.2017

4. Relevant Policies / Government Guidance

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Tendring District Local Plan 2007

EN1 Landscape Character

EN2 Local Green Gaps

EN6 Biodiversity

EN6A Protected Species

EN11a Protection of International Sites: European Sites and RAMSAR Sites

EN17 Conservation Areas

EN20 Demolition within Conservation Areas

COM6 Provision of Recreational Open Space for New Residential Development

HG1 Housing Provision

HG3 Residential Development Within Defined Settlements

HG6 Dwelling Size and Type

HG7 Residential Densities

HG9 Private Amenity Space

HG13 Backland Residential Development

HG14 Side Isolation

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
PPL4 Biodiversity and Geodiversity
PPL6 Strategic Green Gaps
PPL8 Conservation Areas
SP1 Presumption in Favour of Sustainable Development
SP2 Spatial Strategy for North Essex
SPL1 Managing Growth
SPL2 Settlement Development Boundaries
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 (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.

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.

5. Officer Appraisal

Site Description

The application site is Number 52 New Road, known as 'Morschach', and the associated land running south-east through the site. The site currently consists of an existing bungalow, which is a modern property of no particular architectural merit, which is accessed directly from New Road, close to the village playing field. The character of the surrounding area is relatively urbanised, with residential development comprising of detached, semi-detached and terraced housing. The main bulk of surrounding development is sited to the northern section of New Road, where there are a number of housing estates, with development to the south more sporadic.

The site falls outside of the Settlement Development Boundary for Mistley within the Adopted Tendring Local Plan 2007, but within in the Emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft. The site also falls inside the Manningtree and Mistley Conservation Area.

Description of Proposal

The application seeks planning permission for the erection of two bungalows to be sited to the rear of 52 New Road. The proposal also includes alterations to 52 New Road, which will see a partial demolition that will reduce its width by 4m to accommodate the necessary access to the site, and the addition of a rear single storey extension.

The two dwellings are to be single storey, detached and each served by three bedrooms.

Site History

Under planning reference 17/01183/FUL, planning permission was refused for eight apartments on this site. The reason for refusal centred on that the proposed development represented a form of backland development that would not be in-keeping with the character and appearance of the surrounding area, which is also within Mistley Conservation Area.

This decision was also dismissed at appeal, under reference APP/P1560/W/18/3194064 where the Inspector concluded "the proposal would fail to preserve or enhance the character of appearance of the MMCA".

Assessment

1. Principle of Development

The site is situated within the defined settlement limits of Mistley as defined by the emerging Publication Draft (2017), and therefore the principle of residential development in this location is acceptable subject to the detailed considerations as set out below.

2. Backland Development

The development involves the construction of two detached dwellings in a 'backland' location to the rear of the established residential frontage along New 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.

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.

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.

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

i. the site is located within a defined settlement boundary within the emerging local plan; however is not designated for any particular use;

ii. Policy HG9 of the Adopted Local Plan states three bedroom properties should have a minimum of 100sqm private amenity space. The submitted plans demonstrate there is sufficient provision for both the existing and proposed dwellings. The proposal also shows off street parking provision that meets the Adopted Car Parking Standards minimum provision of two spaces measuring 5.5m x 2.9m for each dwelling.

iii. the access for the new dwelling will be shared with the existing dwelling, utilising the existing site access point off New Road to the north-west of the site. The comings and goings associated with two additional dwellings will also not result in significant noise disturbances to the occupiers of 52 or 54 New Road, whilst a similar access is in situ currently.

iv. whilst the layout indicates 'tandem development' with a shared access, it is important to assess if there is any identifiable harm as a result. The preamble of Policy HG13 states that tandem development consists of rows of dwellings immediately behind an existing residential frontage served by shared access ways - it is generally unsatisfactory due to difficulties of access to the dwelling at the rear and the disturbance and lack of privacy suffered by residents at the dwelling in front.

On this occasion, there will be no significant impacts to the front dwellings in regards to loss of privacy or disturbance given it only involves two dwellings. Therefore, on balance, whilst the layout shows tandem development with a shared access, there is not significant enough harm to add as a refusal reason.

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

vi. The development of the site would not form a hard urban edge to the settlement as there is residential development to the north, west and south-west.

vii. Within appeal decision APP/P1560/W/18/3194064 on this site the inspector stated "*The proposal may not be entirely visible from New Road . . . but would be readily visible from a number of properties and from the recreation ground . . . irrespective of this, the requirement for development proposals to preserve or enhance the character or appearance of a conservation area applies with equal force whether or not the proposal is prominent or in public view.*" He went on to further state "*There are cul-de-sacs in the wider area but none on this side of New Road, which has a markedly different character than the more modern developments opposite and a strong affinity to the open space of the recreation ground. It provides a sense of openness and spaciousness that positively contributes to the tranquil and quasi-rural character and appearance of its surroundings.*" and "*not all elements of a conservation area will necessarily contribute to its significance but in this case the site positively contributes to the character and appearance of the MMCA and therefore to its aesthetic significance.*"

The proposed development, which falls within the Manningtree and Mistley Conservation Area, would face on to the memorial fields open space area and appear cramped against the southern boundary. The character and form of the settlement at this point consists generally of substantial detached and semi-detached dwellings situated on large plots in a frontage form. The proposed development is at considerable variance with this fundamental character and will introduce development within the rear gardens of the frontage properties, adding density to an area typically more open.

The buildings proposed would appear isolated due to the distance back from the road and would be out-of-character with the nearby forward facing houses at the drive entrance, and the general character of the locality. The introduction of built-form so close to the playing fields, including significant levels of hard standing, would be harmful to the relationship between buildings and open spaces.

The proposal is therefore detrimental to the pattern of development within the settlement and its appearance within the Conservation Area.

3. Visual Impacts

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).

As previously discussed, the proposed development would appear at odds with the general character of the surrounding built form, resulting in higher density development to an area more open with road fronting properties afforded long rear plots.

In terms of the design of the two proposed bungalows, they are both of similar appearance. They are considered to have an excessive width, but do incorporate features to soften their impact, including canopy's, brick plinths and chimneys. Therefore, on balance, the harm identified is not considered to be sufficient to add as a reason for refusal.

The proposed changes to the bungalow on the road frontage are also considered to be visually acceptable in the Conservation Area. The existing bungalow has no particular merit, and the revised appearance has a feature front porch, a balanced appearance to the front elevation and a more pleasing appearance.

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 this is comfortably achievable for both new dwellings and for the existing dwellings.

4. Impact upon neighbours

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).

The two main neighbouring properties likely impacted by this proposed development are numbers 52 and 54 New Road, both located to the north-west. However, given significant separation distances of approximately 45 metres, and the single storey nature of the two proposed dwellings, there is not considered to be any significant harm to existing amenities. Further, while it is acknowledged the proposed access will run alongside the two properties, the noise associated with the comings and goings of vehicles in relation to two dwellings is not considered to be excessive and reasonable to add as a reason for refusal to this decision.

5. Highways Impacts

Essex Highways Authority, following consultation, initially raised an objection on the grounds that the visibility splays could not be achieved as the land was not in their ownership. However, as the land is in the ownership of the applicant, this initial objection has since been rescinded. Therefore Essex Highways Authority have raised no objections subject to a number of conditions relating to the proposed road junction being constructed at right angles, a vehicular turning facility, the provision of clear visibility splays, the width of the access drive, the use of no unbound materials,

no discharge of surface water and new boundary planting being sited a minimum of 1 metre back from the highway boundary.

Adopted Car Parking Standards state that for a dwelling with two bedrooms or more, provision should be made for a minimum of two parking spaces measuring 5.5m x 2.9m. The submitted plans demonstrate that this is achievable for both the existing and proposed dwellings.

6. Trees and Landscapes

Following consultation, the Council's Tree and Landscapes Officer stated that the submitted Tree Survey Plan and Schedule of Trees accurately describes the health and condition of the trees on the land, and shows the extent of the constraint that they exert on the development potential of the land. Further, while the submitted block plan showed the positions of the trees, it did not show their Root Protection Areas. This was therefore requested and supplied by the applicant.

Following the submission of this information, the Tree and Landscapes Officer stated that the plan shows a significant incursion into the Root Protection Areas of trees T2, T3, T4 and T5, which has the potential to cause harm to trees which are important features within their setting and the conservation area.

Moreover, in terms of the relationship between the retained trees and the proposed dwellings, T13 and T14 will be close to the north-eastern side of Unit 2; taking into account the associated issues with leaves and debris falling from the tree onto the dwelling and in the garden, as well as the obstruction to daylight, a satisfactory juxtaposition between the retained trees and the new dwellings has not been achieved.

7. Habitats Regulation Assessment

Under the Habitats Regulations, a development which is likely to have a significant effect or an adverse effect (alone or in combination) on a European designated site must provide mitigation or otherwise must satisfy the tests of demonstrating 'no alternatives' and 'reasons of overriding public interest'. There is no precedent for a residential development meeting those tests, which means that all residential development must provide mitigation. This residential development lies within the Zone of Influence of the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). The residents of new housing are therefore considered likely to regularly visit relevant designated sites for recreation. In order to avoid a likely significant effect in terms of increased recreational disturbance to coastal European designated sites (Habitats sites) in particular the Stour and Orwell Estuaries RAMSAR and SPA, mitigation measures will need to be in place prior to occupation.

A proportionate financial contribution has not been secured in accordance with the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) requirements. As submitted, there is no certainty that the development would not adversely affect the integrity of Habitats sites.

The proposal is therefore considered to be contrary to 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.

8. Legal Obligations

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".

The Council's Public Open Space and Play Team have stated there is currently a deficit of -3 hectares of equipped play/formal open space in Mistley. Due to the overall significant lack of both Open Space and Play Areas in the area a contribution is both relevant and justified to this

application, with the money to be spent upgrading existing equipment at Welcome Home Field, Mistley.

This application has not come with a correctly completed unilateral undertaking for a contribution towards play and formal open space facilities.

No such contribution has been included within this application nor has any justification for the lack of a contribution and therefore this scheme does not comply with Policy COM6.

Other Considerations

Councillors G V Guglielmi and Coley requested the item be determined by Planning Committee should it be recommended for approval. He raised concerns with regards to a negative impact to the street scene, highway safety concerns, harm to neighbouring amenities and it represented a form of backland development.

Mistley Parish Council objected for the following reasons:

1. Outside of a Settlement Development Boundary;
2. Overdevelopment;
3. Parking issues;
4. Overlooking to the adjacent playground; and
5. Highway safety

In answer to this, points 1, 3 and 5 have been addressed within the main body of the report. In regard to point 2, the dwellings both comfortably have enough amenity and parking space and therefore this does not represent overdevelopment. In terms of point 4, the dwellings are single storey and there is sufficient separation distance to ensure no overlooking concerns.

There have also been 14 letters of objection received, with the following concerns:

1. Parking problems;
2. Highway safety;
3. Harm to character and appearance of conservation area;
4. Harm to protected trees;
5. No evidence this area needs more housing; and
6. Represents backland development.

In answer to this, points 1, 2, 3, 4 and 6 have been addressed within the main body of the report. In regard to point 5, this is not a material planning consideration.

6. Recommendation

Refusal.

7. Reasons for Refusal

- 1 The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. One of the core planning principles of The National Planning Policy Framework (NPPF) as stated at paragraph 124 is to always seek to secure high quality design. 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).

Policy HG13 (vii) of the Adopted 2007 Local Plan states that proposals for residential development of 'backland' sites will only be permitted if the proposal would not be out of

character with the area or set a harmful precedent for other similar forms of development. These sentiments are echoed within Policy LP8 (f) of Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017).

Within appeal decision APP/P1560/W/18/3194064 on this site the inspector stated "*The proposal may not be entirely visible from New Road . . . but would be readily visible from a number of properties and from the recreation ground . . . irrespective of this, the requirement for development proposals to preserve or enhance the character or appearance of a conservation area applies with equal force whether or not the proposal is prominent or in public view.*" He went on to further state "*There are cul-de-sacs in the wider area but none on this side of New Road, which has a markedly different character than the more modern developments opposite and a strong affinity to the open space of the recreation ground. It provides a sense of openness and spaciousness that positively contributes to the tranquil and quasi-rural character and appearance of its surroundings.*" and "*not all elements of a conservation area will necessarily contribute to its significance but in this case the site positively contributes to the character and appearance of the MMCA and therefore to its aesthetic significance.*"

The proposed development, which falls within the Manningtree and Mistley Conservation Area, would face on to the memorial fields open space area and appear cramped against the southern boundary. The character and form of the settlement at this point consists generally of substantial detached and semi-detached dwellings situated on large plots in a frontage form. The proposed development is at considerable variance with this fundamental character and will introduce development within the rear gardens of the frontage properties, adding density to an area typically more open.

The buildings proposed would appear isolated due to the distance back from the road and would be out-of-character with the nearby forward facing houses at the drive entrance, and the general character of the locality. The introduction of built-form so close to the playing fields, including significant levels of hard standing, would be harmful to the relationship between buildings and open spaces.

The proposal is therefore detrimental to the pattern of development within the settlement and its appearance within the Conservation Area, and fails to comply with the above local and national policies.

- 2 Policy EN1 of the Saved Local Plan states the quality of the district's landscape and its distinctive local character will be protected and, where possible, enhanced. Any development which would significantly harm landscape character or quality will not be permitted. The sentiments of this policy are carried forward within Emerging Local Plan Policy PPL3.

As the application site is situated within the Mistley and Manningtree Conservation Area all trees with a stem diameter greater than 75mm at 1.5m from ground level are afforded formal legal protection. The submitted information shows there is to be a significant incursion into the Root Protection Areas of trees T2, T3, T4 and T5 (as shown on Drawing Number 01), which has the potential to cause harm to trees which are important features within their setting and the conservation area. Moreover, in terms of the relationship between the retained trees and the proposed dwellings, T13 and T14 will be sited in close proximity to the north-eastern side of Unit 2. Taking into account the associated issues with leaves and debris falling from the tree onto the dwelling and in the garden, as well as the obstruction to daylight, a satisfactory juxtaposition between the retained trees and the new dwellings has not been achieved.

The proposal thereby fails to accord with the above local plan policies.

- 3 Under the Habitats Regulations, a development which is likely to have a significant effect or an adverse effect (alone or in combination) on a European designated site must provide mitigation or otherwise must satisfy the tests of demonstrating 'no alternatives' and 'reasons of overriding public interest'. There is no precedent for a residential development meeting

those tests, which means that all residential development must provide mitigation. This residential development lies within the Zone of Influence of the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). The residents of new housing are therefore considered likely to regularly visit relevant designated sites for recreation. In order to avoid a likely significant effect in terms of increased recreational disturbance to coastal European designated sites (Habitats sites) in particular the Stour and Orwell Estuaries RAMSAR and SPA, mitigation measures will need to be in place prior to occupation.

A proportionate financial contribution has not been secured in accordance with the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) requirements. As submitted, there is no certainty that the development would not adversely affect the integrity of Habitats sites.

The proposal is therefore considered to be contrary to 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.

- 4 Paragraph 54 of the National Planning Policy Framework (2018) states Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Paragraph 56 of the NPPF states planning obligations must only be sought where they are necessary to make the development acceptable in planning terms, directly relate to the development and fairly and reasonably relate in scale and kind to the development.

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".

There is currently a deficit of -3 hectares of equipped play/formal open space in Mistley. Due to the overall significant lack of both Open Space and Play Areas in the area a contribution is both relevant and justified to this application, with the money to be spent upgrading existing equipment at Welcome Home Field, Mistley.

This application has not come with a correctly completed unilateral undertaking for a contribution towards play and formal open space facilities and therefore this scheme does not comply with Policy COM6.

8. Informatives

Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.