

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	ML	19/07/2019
Planning Development Manager authorisation:	TF	23/07/2019
Admin checks / despatch completed	AP	23/7/19

**Application:** 18/01994/OUT **Town / Parish:** Mistley Parish Council

**Applicant:** Hopkins Homes Ltd, Jackie Dorrington-Ward, Karen Rose

**Address:** Land South of Harwich Road Mistley

**Development:** Outline planning application for the erection of up to 100 dwellings with associated vehicular access, landscaping, open space, car parking and pedestrian links.

### 1. Town / Parish Council

Mistley Parish Council strongly objects to both planning applications - for the following reasons: (1) the Parish Council concurs with the statement in the pre-application advice in that the development is outside the existing and proposed settlement boundary; (2) over-development of the area; (3) an additional 100 dwellings would result in a significant increase of traffic and put pressure on the limited resources of local doctors and schools; (4) the application is contrary to the undertaking in the application for phase one of the development by the applicant and would have an adverse environmental impact by impinging on the Essex Way; and (5) the Local Planning Authority currently has significantly more than a five-year land supply.

### 2. Consultation Responses

ECC Schools Service

Thank you for providing details of the above TEN/18/01994 planning application for up to 100 new homes. From the information I have received, I have assessed the application on the basis of 100 houses flats. Assuming that all of these units are homes with two or more bedrooms, a development of this size can be expected to generate the need for up to 9 Early Years and Childcare (EY&C) places; 30 primary school, and 20 secondary school places.

Please note that any developer contribution figures referred to in this letter are calculations only, and that final payments will be based on the actual dwelling unit mix and the inclusion of indexation.

Early Years and Childcare

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 summer 2017, there are 2 providers of early years and childcare in the area with no unfilled places recorded. For Essex County Council to meet its statutory duties it must both facilitate sufficient places to meet free childcare entitlement demand and also ensure a diverse range of provision so that different needs can be met. An additional 9 places



would be required therefore a developer contribution of £156,798, index linked to April 2018, is sought to mitigate its impact on local EY&C provision.

#### Primary Education

This proposed development is located within the priority admissions area of Mistley Norman Church of England Primary School which has capacity for 105 pupils which is part of the Tendering Group 6 Primary Forecast Group set out in Essex County Council's document 'Commissioning School Places in Essex'. The School is expected to be full by the academic year 2021/22 with a deficit of 46 places forecast for the Tendering Group 6 area. The demand generated by this development would be in addition to this demand and therefore a project to provide additional school capacity will be needed, thereby, a developer contribution of £458,430 index linked to April 2018, is sought to mitigate its impact on local primary school provision.

#### Secondary Education

With regards to secondary education needs, this proposed development is located within the priority admissions area of Manningtree High School which is, for the purposes of forecasting part of the Tendering Secondary Group 4 (set out in Essex County Council's document 'Commissioning School Places in Essex'). The School was full as of the September 2018 intake and is forecast to rise by 61 the academic year 2020/21.

Therefore a developer contribution of £464,280, index linked to April 2018, is sought to mitigate its impact on local secondary school provision.

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

In view of the above, I request on behalf of Essex County Council that if planning permission for this development is granted it should be subject to a section 106 agreement to mitigate its impact on childcare and education. Our standard formula S106 agreement clauses that ensure the contribution would be fairly and reasonably related in scale and kind to the development are available from Essex Legal Services. If your council were minded to turn down the application, I would be grateful if the lack of surplus childcare and education provision in the area to accommodate the proposed new homes can be noted as an additional reason for refusal, and that we are automatically consulted on any appeal or further application relating to the site.

Tree & Landscape Officer

#### Original Comments

There will be no harm to trees or hedgerows as the site is currently in agricultural use and has no trees or other vegetation in the main body of the land. Boundary hedgerows will not be affected.

In order to assess the impact of the development proposal on the local landscape character the applicant has submitted a Landscape and Visual Assessment (LVIA). The Landscape and Visual Impact Assessment has been carried out in accordance with Landscape



Institute and Institute of Environmental Management and Assessment guidance contained in the Guidelines for Landscape and Visual Impact Assessment Third Edition 2013.

The document describes existing landscape character and qualities of the landscape. It identifies and records the potential impact of the development on the character of the landscape and the way that it is perceived and enjoyed by the public.

Initially it should be noted that section 2.1 of the LVIA states that 'The site forms part of the more recent residential areas that form New Mistley.' This is incorrect: the application site is agricultural land adjacent to development currently in progress. Additionally section 2.2 makes reference to the harsh urban edge where Rigby Avenue abuts the adjacent land. The softening of the settlement edge has been addressed by the soft landscaping associated with the approved development currently under construction.

The LVIA, again incorrectly, states in section 2.26 that the 'site forms part of the wider Harwich Road Development' and makes reference to the 'opportunity to achieve a soft landscaped edge. This opportunity has already been taken and will be implemented as part of the development currently in progress.

The current development proposal is not required to achieve this benefit. In any case the first bullet point in section 3.4 of the LVIA makes reference to the limited opportunities for tree planting to screen the site because of the presence of a gas main. It is unlikely that any significantly planting will be permitted close to the existing gas main.

Whilst the LVIA does not inaccurately quantify the value of the local landscape and its visual qualities it does not fully recognise or give sufficient weight to the intrinsic value of countryside and the need for it to be protected for its own sake.

The development of the land would result in permanent harm to both the character and appearance of the local landscape character primarily in the immediate environs of the development site. The reduction in the separation distance between the development and the Essex Way Public Right of Way (PROW) would significantly affect user's enjoyment of the route, experience of being within the countryside and that of relative tranquillity.

It is considered that the development will have an overbearing impact on the use and enjoyment of the Essex Way.

It is questionable whether the mitigation planting described in section 4.19 can achieve the desired objective of screening the development because of the limited distance between the development and the Essex Way and the impact that the presence of the gas main will have on tree, shrub and hedgerow planting.

It is accepted that from the more distant viewpoints the visual impact of the development will not be significant. Nevertheless the change in character of the land is both permanent and significantly harmful.

On balance, in landscape terms, it is considered that the development proposal would, if approved and implemented, contribute to the gradual urbanisation of the local landscape character.



In terms of the proposed extension to the Suffolk Coast and Heaths Area of Outstanding Natural Beauty (AONB) on 11 December 2018 Tendring District Council was informed that on the 5th December 2018 Natural England's Board approved the draft Order, without any changes to the boundary proposed during the statutory consultation. It also approved the publication of the required Notice, as stipulated in the Countryside and Rights of Way Act, 2000.

Once the Notice is published, copies of the draft Order will be available for public inspection for a minimum of 28 days in local authority offices and libraries. Any person may make representations to Natural England during this period. Further information will be made available, by Natural England, on the next stage in due course, but it is anticipated that this will be towards the end of January 2019.

In essence both the Council's representations made to Natural England and those made by the developer have not resulted in a change to the proposed position of the boundary of the extension to the AONB.

If planning permission is likely to be granted then a detailed soft landscaping scheme should be secured by a planning condition. The enhancement of the public realm and planting on the southern boundary to provide a soft edge to the development will be key elements of the soft landscaping of the site

### **Secondary Comments**

Notwithstanding previous comments I have the following comments to make on the additional information provided by the applicant.

If it were possible for the proposed soft landscaping to be carried out close to the Gas Main, as proposed on the Landscape Masterplan (Rev E) then this would create a strong landscape buffer on the southern boundary of the application site. However it does not address the impact of the development in terms of the change to the character of the local landscape that will arise because of the change of use of the land. Although screening is desirable the harm will arise from the change to the character of the local landscape that will result simply from the development of the land. The development in this location will clearly reduce the separation distance between the Essex Way and land that has been built on. This will have a detrimental impact on the use and enjoyment of the Essex Way.

In terms of the proposed soft landscaping it should be noted that the National Grid document provides 'guidance' on what may be able to be planted subject to an easement being obtained from them to do so. It is yet to be seen whether or not they will grant an easement for the proposed planting. Without the easement being in place there is no guarantee that the proposed planting can be secured.

The comments provided by the applicant relating to the quality of the local landscape inasmuch that it can only be classified as 'ordinary countryside' are noted and not challenged. However, it is important to recognise that the countryside should be protected for its own sake especially when a proposed change of use of the land would clearly have a detrimental impact on the character and appearance of the local landscape.



ECC Highways Dept

Essex County Council  
Archaeology

A Desk Based Assessment has been submitted with the application which summarises the results of previous work that has been carried out on site and the results of archaeological evaluation on the adjacent site. The work carried out so far provides enough information on which to assess the potential for further archaeological remains within the development site. This should be considered as high for further post-medieval periods and moderate for prehistoric and medieval.

To the southeast of the development area lies the site and ruins of St Marys Old Church which is a scheduled monument and Listed Building. It was associated with a medieval settlement to the south at Mistley Heath. The development is likely to result in harm to the setting and significance of the scheduled monument and its listed building remains. In line with NPPF policies for the historic environment, in considering whether to grant planning permission, Tendring District Council should weigh the level of harm to the significance of the affected designated heritage asset against any public benefits arising from the proposed development.

If Tendring District Council is minded to grant the planning application, 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.

Essex Wildlife Trust

No comments received

NHS East Essex CCG

The proposed development is likely to have an impact on the services of two GP practices operating within the vicinity of the application site. These GP practices do not have capacity for the additional growth resulting from this development.

The proposed development will be likely to have an impact on the NHS funding programme for the delivery of primary healthcare



provision within this area and specifically within the health catchment of the development. North East Essex CCG would therefore expect these impacts to be fully assessed and mitigated.

#### Review of Planning Application

North East Essex CCG acknowledges that the planning application includes a Planning Statement which suggests that a capital contribution may be required to mitigate against the healthcare impacts arising from the proposed development

A Healthcare Impact Assessment (HIA) has been prepared by North East Essex CCG to provide the basis for a developer contribution towards capital funding to increase capacity within the GP Catchment Area.

The existing GP practices do not have capacity to accommodate the additional growth resulting from the proposed development. The development could generate approximately 220 residents and subsequently increase demand upon existing constrained services.

The development would have an impact on primary healthcare provision in the area and its implications, if unmitigated, would be unsustainable. The proposed development must therefore, in order to be considered under the 'presumption in favour of sustainable development' advocated in the National Planning Policy Framework, provide appropriate levels of mitigation.

A developer contribution will be required to mitigate the impacts of this proposal. North East Essex CCG calculates the level of contribution required, in this instance to be £34,684. Payment should be made before the development commences.

#### UU Open Spaces

##### 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 are located at Stourview Close 0.3 this play area is classified as Local Equipped Areas for Play with a small Multi Games Unit. But provides limited provision and is in need of up dated. The development site doesn't include any play provision therefore it would be necessary to make improvements to this area to cope with the additional use.

##### 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 providing a new surface of the MUGA and updating the play equipment at Stourview Close Mistley

#### Waste Management

No comments at this stage.

#### Housing Services

I note from the indicative layout that the applicant has accounted for 29 of the 98 homes to be for affordable housing. This equates to



approximately 30% of the total number of homes on the site and is in line with the council's requirement for 30% of homes on major developments to be for affordable housing.

I am happy with the mix proposed in the indicative layout and the council would prefer that another registered provider be sought to take on the affordable homes on the site. If another registered provider cannot be found, the council will consider other delivery options. The tenure of the affordable homes can be agreed at a later date.

The Ramblers Association No comments received

Essex Bridleways Association No comments received

Environmental Protection Construction Method Statement Required

Essex County Council  
Archaeology

The advice pertains to an outline planning application for the erection of up to 100 dwellings with associated vehicular access, landscaping, open space, car parking and pedestrian links.

There are two designated heritage assets I consider relevant to this application which include:

- Scheduled Monument: Site of Old St Mary's Church (List Entry ID: 1002142)

- Grade II Listed: Ruins of St Mary's Church (List Entry ID: 1240277)

The open agrarian landscape, around these designated heritage assets, makes a positive contribution to their setting and significance. This has been a situation for hundreds of years and this historic land use has a functional and historic relationship to St Mary's Church. As identified in the applicant's Heritage Statement, the proposal will result in fundamental change to this area, causing harm to the setting and significance of these two designated heritage assets. The proposed development abuts the scheduled monument and the proposed landscaping is not considered mitigation given it results in a change of land use which, as existing, is fundamental to the positive contribution the existing setting makes to significance. The proposal will also result in the obscuring of views west from the heritage assets, these positively contribute to the understanding and appreciation of their historic landscape setting.

I suggest there would be considerable harm to setting and significance to the two designated heritage assets. This harm would be 'less than substantial' and as such paragraph 196 of the NPPF is relevant.

Given there is harm to the setting/significance of a scheduled monument, I recommend Historic England is consulted.

Cadent Gas Limited No comments received

Natural England SUMMARY OF NATURAL ENGLAND'S ADVICE - European designated sites

It has been identified that this development site falls within the 'Zone of Influence' (ZoI) of one or more of the European designated sites scoped into the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS).



As you will be aware, the Essex Coast RAMS is a large-scale strategic project which involves a number of Essex authorities, including Tendring, working together to mitigate the recreational impacts that may occur on the interest features of the coastal European designated sites in Essex as a result of new residential development within reach of them; the European designated sites scoped into the RAMS are notified for features which are considered sensitive to increased levels of recreation (e.g. walking, dog walking, water sports etc.) which can negatively impact on their condition (e.g. through disturbance birds, trampling of vegetation, erosion of habitats from boat wash etc.). For further information on these sites, please see the Conservation Objectives and Information Sheets on Ramsar Wetlands which explain how each site should be restored and/or maintained.

In the context of your duty as competent authority under the provisions of the Habitats Regulations, it is therefore anticipated that, without mitigation, new residential development in this location is 'likely to have a significant effect' on one or more European designated sites, through increased recreational pressure, either when considered 'alone' or 'in combination' with other plans and projects.

#### NO OBJECTION - SUBJECT TO APPROPRIATE MITIGATION BEING SECURED

We understand that you have screened this proposed development and consider that it falls within scope of the Essex Coast RAMS, and that you have undertaken a Habitats Regulations Assessment (HRA) (Stage 2: Appropriate Assessment) in order to secure any necessary recreational disturbance mitigation, and note that you have recorded this decision within your planning documentation.

We consider that without appropriate mitigation the application would:  
- have an adverse effect on the integrity of European designated sites within scope of the Essex Coast RAMS

We are satisfied that the mitigation described in your Appropriate Assessment is in line with our strategic-level advice (our ref: 244199, dated 16th August 2018 and summarised at Annex 1). The mitigation should rule out an 'adverse effect on the integrity' (AEOI) of the European designated sites that are included within the Essex Coast RAMS from increased recreational disturbance.

We advise that an appropriate planning condition or obligation is attached to any planning permission to secure these mitigation measures.

ECC Highways Dept

The outline plan appears to be fine based on the information provided; they just need to be mindful of the following points but these should be covered within the detailed application anyway:

1. All internal road junctions should be provided with 25m x 2.4m x 25m vehicular visibility splays.
2. All new carriageways should be provided with a centreline bend radius of 13.6m together with adequate forward visibility.
3. Internal road junctions should be provided with sufficient radii to enable all service and delivery vehicles to navigate around and maintain position on the correct carriageway lane (minor overruns maybe permitted).
4. The applicant should be requested to consider the provision and location of street lighting columns, particularly at road junctions, these should be within the adoptable areas.



5. The proposed carriageways should be provided at 5.5m between kerbs or 6.0m where considered a shared surface.
6. All footways should be provided at no less than 2.0m in width and also provide connectivity throughout the site.
7. Refuse freighters are unlikely to manoeuvre over Private Drives.
8. All Private Drive connections to estate roads should be treated similarly to standard road designs.
9. There should be no vehicular access over any radius kerbs.
10. Communal refuse / recycling presentation areas / facilities should be provided within 15m of any carriageway.
11. All trees provided within the adoptable highway will attract a commuted sum of no less than £750 per tree.
12. Vehicular access for a single dwelling should be provided at 3.7m in width or 5.5m in width, if shared.
13. Improvements to the Public Right of Way (as per for Phase 1) crossing the site, for the connection to the Essex Way to the south of the site and Rigby Avenue to the north.  
(details shall be agreed with the Local Planning Authority prior to commencement of the development)
14. Residential Travel Information Packs

Historic England

Thank you for your letter of 15 January 2019 regarding the above application for planning permission. On the basis of the information available to date, we offer the following advice to assist your authority in the determining the application.

#### Historic England Advice

The proposed development is located to the west of the ruined remains of old St Mary's church which is designated a scheduled monument. The extant remains of the church are very slight and the churchyard is now a paddock. It is now located within the small hamlet of Mistley Heath, on the edge of Mistley, on the edge of a largely open arable landscape, with the modern suburban housing of Mistley encroaching from the north-west. The NPPF emphasises great weight should be attached to the conservation of designated heritage assets, and that any harm or loss to the significance of an asset, including by development in its setting, should require clear and convincing justification (paras 193-4). While the proposed development would intrude into the setting of the ruined church, if opportunities are taken to maximise public open space and appropriate landscaping on the eastern edge of the proposed development, we judge that the harm would be slight and that this harm should be weighed against any public benefits of the proposed development in line with NPPF para 196.

Health and Safety  
Executive

Do not advise against, consequently, HSE does not advise, on safety grounds, against the granting of planning permission in this case.

ECC SuDS Consultee

Lead Local Flood Authority position

Having reviewed the Flood Risk Assessment and the associated documents which accompanied the planning application, we do not object the granting of planning permission based on the following:

Condition 1



No works shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme should include but not be limited to:

- o Demonstrate that features are able to accommodate a 1 in 10 year storm events within 24 hours of a 1 in 100 year event plus climate change.
- o The appropriate level of treatment for all runoff leaving the site, in line with the CIRIA SuDS Manual C753.
- o Detailed engineering drawings of each component of the drainage scheme.
- o A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
- o A written report summarising the final strategy and highlighting any minor changes to the approved strategy.

The scheme shall subsequently be implemented prior to occupation.

Reason

- o To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site.
- o To ensure the effective operation of SuDS features over the lifetime of the development.
- o To provide mitigation of any environmental harm which may be caused to the local water environment
- o Failure to provide the above required information before commencement of works may result in a system being installed that is not sufficient to deal with surface water occurring during rainfall events and may lead to increased flood risk and pollution hazard from the site.

## Condition 2

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

Reason

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

Construction may lead to excess water being discharged from the site. If dewatering takes place to allow for construction to take place below groundwater level, this will cause additional water to be discharged. Furthermore, the removal of topsoils during construction may limit the ability of the site to intercept rainfall and may lead to increased runoff rates. To mitigate increased flood risk to the surrounding area during construction there needs to be satisfactory storage of/disposal of surface water and groundwater which needs to be agreed before commencement of the development.

Construction may also lead to polluted water being allowed to leave the site. Methods for preventing or mitigating this should be proposed.

## Condition 3



No works shall take place until a Maintenance Plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and agreed, in writing, by the Local Planning Authority.

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

**Reason**

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

Failure to provide the above required information before commencement of works may result in the installation of a system that is not properly maintained and may increase flood risk or pollution hazard from the site.

**Condition 4**

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

**Reason**

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

**3. Planning History**

15/01520/OUT	The erection of up to 135 dwellings, including a flexible building for use as a healthcare facility (Class D1) and/or residential use (Class C3), together with access from Harwich Road; green infrastructure provision including allotments (about 1 hectare), children's play area, footways and structural landscaping; a sustainable drainage system including detention basin and swales and other related infrastructure and services including a footpath/cycleway parallel to Heath Road.	Approved	14.09.2016
17/00943/DETAIL	Reserved matters application further to outline planning application 15/01520/OUT for details of appearance, scale, layout	Approved	04.12.2017



and landscaping, relating to the erection of 135 dwellings, incorporating a flexible building for use as either a healthcare facility or a dwelling and associated works.

18/00317/DISCON	Discharge of conditions 7 (Tree Schedule), 8 (Phasing Plan), 9 (Landscape and Open Space), 10 (Surface Water Drainage), 11 (Archaeological Investigation), 12 (Ecological Mitigation Scheme), 13 (Construction Method Statement), 14 (Local Recruitment Strategy), 15 (Specified Highway Works) and 20 (Broadband) of approved applications 15/01520/OUT and condition 2 (Materials Plan) of approved application 17/00943/DETAIL.	Current
18/01994/OUT	Outline planning application for the erection of up to 100 dwellings with associated vehicular access, landscaping, open space, car parking and pedestrian links.	Current
18/01995/OUT	Outline planning application for the erection of up to 100 dwellings with associated vehicular access, landscaping, open space, car parking and pedestrian links.	Current

#### **4. Relevant Policies / Government Guidance**

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Tendring District Local Plan 2007

QL1 Spatial Strategy

QL2 Promoting Transport Choice

QL3 Minimising and Managing Flood Risk

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

QL12 Planning Obligations

HG1 Housing Provision

HG3A Mixed Communities



HG4 Affordable Housing in New Developments

HG6 Dwelling Size and Type

HG7 Residential Densities

HG9 Private Amenity Space

COM6 Provision of Recreational Open Space for New Residential Development

COM26 Contributions to Education Provision

COM31A Sewerage and Sewage Disposal

EN1 Landscape Character

EN5 Areas of Outstanding Natural Beauty (AONB's)

EN6 Biodiversity

EN6A Protected Species

EN11A Protection of International Sites European Sites and RAMSAR Sites

EN11B Protection of National Sites SSSI's, National Nature Reserves, Nature Conservation Review Sites, Geological Conservation Review Sites

EN17 Conservation Areas

EN23 Development Within the Proximity of a Listed Building

EN29 Archaeology

TR1A Development Affecting Highways

TR3A Provision for Walking

TR4 Safeguarding and Improving Public Rights of Way

TR7 Vehicle Parking at New Development

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

SP1 Presumption in Favour of Sustainable Development

SP2 Spatial Strategy for North Essex

SP5 Infrastructure & Connectivity

SPL1 Managing Growth

SPL2 Settlement Development Boundaries

SPL3 Sustainable Design

LP1 Housing Supply

LP2 Housing Choice



- LP3 Housing Density and Standards
- LP4 Housing Layout
- LP5 Affordable and Council Housing
- HP5 Open Space, Sports & Recreation Facilities
- PP12 Improving Education and Skills
- PPL1 Development and Flood Risk
- PPL3 The Rural Landscape
- PPL4 Biodiversity and Geodiversity
- PPL5 Water Conservation, Drainage and Sewerage
- PPL7 Archaeology
- PPL9 Listed Buildings
- CP1 Sustainable Transport and Accessibility
- CP2 Improving the Transport Network

Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

Essex Design Guide

### **Status of the Local Plan**

The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF (2019) allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 48 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. As of 16th June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

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

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

In relation to housing supply:



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

## **5. Officer Appraisal (including Site Description and Proposal)**

### Site Description

The application site measures approximately 7.47 hectares of land comprising of land located to the south of Hopkins Homes existing Phase 1 development off Harwich Road, Mistley for 135 dwellings that is currently under construction. Access to the site is through the Phase 1 housing development to the north and the application site red line reflects this requirement. The site comprises arable agricultural land across the southern part of two fields. It is located at the eastern end of Mistley to the south of Harwich Road and the existing post-war housing development at Rigby Avenue and to the west of Heath Road which leads to the settlement of Mistley Heath.

There is a public right of way crossing part of the site along the current field boundary that provides a link between Rigby Avenue and the Essex Way which follows the field's southern boundary. Other than this footpath, there are no environmental or planning designations on the site and the site is in Flood Zone 1 (i.e. low risk).

To the east of the site, across Heath Road, are the remains of St. Mary's Church which are designated as a Scheduled Ancient Monument. An east-west aligned track with public footpath status that is part of the Essex Way demarcates the southern boundary of the site and just north of this within the site there is a gas main that is also aligned east-west.

### Proposal

Outline planning permission is being sought for the residential development of the site comprising 100 dwellings. All matters are reserved aside for access.

The application submission documents state that the development would follow a similar design approach to the Phase 1 development and be at a similar density, scale and massing.

The submitted indicative layout shows areas of open space, incorporating landscape buffers and a drainage basin, would be provided to the western, southern and eastern boundaries of the development. The public right of way crossing the site would be retained, providing a connection to the Essex Way to the south of the site and Rigby Avenue to the north. Additional pedestrian access will be provided through the Phase 1 development to Harwich Road and Heath Road.

Vehicular access from Harwich Road via Hopkins Homes' Phase 1 development to the north. Three separate vehicular access points and additional footpaths are proposed between the Phase 1 and Phase 2 developments.



## Principle of Development

Paragraph 47 of the NPPF requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The site lies outside of the Settlement Development Boundary of both the Saved and Draft Local Plans and is not allocated for development.

Saved Policy QL1 sets out a spatial strategy for Tendring that seeks to direct most new development to the larger urban areas, but allows limited development within the smaller towns and villages where accessibility to employment, services, and public transport is maximised. Draft Policy SPL2 confirms that within settlement development boundaries there will be a general presumption in favour of new development, subject to detailed consideration against other relevant Local Plan policies.

Although the Local Plan was intended to cover the period up to 2011 the policies within it have been saved and are therefore extant. Saved Policy QL1 is broadly consistent with the NPPF in terms of seeking to protect the character and appearance of the countryside and surrounding area. Consequently, Policy QL1, and any conflict with it, can be afforded significant weight. The proposal for residential development on this land does not therefore accord with the development plan.

The emerging Local Plan includes a 'settlement hierarchy' aimed at categorising the district's towns and villages and providing a framework for directing development toward the most sustainable locations. In both the adopted and draft local 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.

Information produced in relation to the updated SHLAA confirms that sites with planning permission/under construction in the collective settlement of Manningtree, Lawford and Mistley currently total over 1052 dwellings. These include 15/00876/OUT for 360 dwellings at 'Lawford Green', 15/00761/OUT for 300 dwellings at Long Road, and 17/00943/DETAIL for 135 dwellings at land south of Harwich Road.

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.

Officers consider that the emerging Local Plan is progressing well, the core planning principles under paragraph 15 of the National Planning Policy Framework (NPPF) that development should be genuinely plan-led apply and the Council should actively manage patterns of growth is therefore awarded significant weight. As such therefore it is considered that further development in this location would be contrary to Saved Policy QL1 and Draft Policy SPL2.

The proposal is contrary to the adopted Local Plan and would conflict with the policies of the National Planning Policy Framework. The development would represent an unnecessary and piecemeal intrusion into the countryside that would have an adverse impact on the character of the area. The development would prejudice the effective and coordinated delivery of infrastructure through the plan-led process and would be disproportionate in scale for its location.

The NPPF defines 'sustainable development' as having three dimensions: economic, social and environmental and these are assessed below:

### Economic

The proposal meets the economic dimension in providing employment through construction of the properties and through future residents supporting local businesses.



## Social

The site is located on the edge of Mistley with footpath links to the services within the collective settlement which include a train station, bus services, shops, doctors surgeries, and a primary and secondary school. The site is therefore considered to be socially sustainable.

## Environmental

The environmental role is about contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy:

## Ecology

The submitted ecological appraisal confirms the following;

Many protected species and species of conservation concern are scoped-out. Direct surveys for reptiles were negative and the numbers of bats recorded by static recorders were low. Great Crested Newts are scoped out, by virtue of direct surveys of two ponds within 250m being negative, most other waterbodies within 250m being unsuitable as breeding habitat, and access being refused to a third pond. As a precautionary measure it is recommended that exclusion fencing is erected as a non-licensable measure along parts of the south and east border. The species of conservation scoped-in will be present as components of larger local populations, namely foraging bats, nesting birds, hedgehogs and invertebrates.

The main impacts of the scheme will be the loss of arable cropland. Breaches of hedgerows are not required and an extensive buffer of open greenspace is proposed along the external boundaries.

Within the scheme it is considered that appropriate soft landscaping is the most important measures for wildlife enhancement. Other measures of relevance include the creation of new dead wood habitat as wood piles, erection of bird and bat boxes, and having holes in garden fences and raised garden gates to allow hedgehogs to pass through the completed scheme.

The recommendations and enhancements outlined within the appraisal would be secured via condition.

The site is 0.7km from the Stour and Orwell Estuaries SPA and the Stour and Orwell Estuaries Ramsar site. The Site is 12.3km from the Essex Estuaries SAC, the Colne Estuary (Mid-Essex Coast Phase 2) SPA, and the Colne Estuary (Mid-Essex Coast Phase 2) Ramsar site.

The Council's Appropriate Assessment confirms that without mitigation it is concluded that impacts on the identified designated sites integrity cannot be discounted. The mitigation to be considered are those features that would reduce the likelihood of residents using these estuary areas for recreation, namely alternative on-site areas of greenspace, and existing footpaths that are connected to the site. The allocation of greenspace on the site is 43% (or 2.8ha, from an overall site area of 6.5ha) and will include appropriate walking routes across this phase, which connect to Phase 1 and to existing housing, a circular walking route and links to a network of footpaths which within a 2km radius are over 8km in length.

Natural England's latest comments (dated 17 May 2019) are as follows;

No objections - we are satisfied that the mitigation described in your Appropriate Assessment is in line with our strategic-level advice (our ref: 244199, dated 16th August 2018 and summarised at Annex 1). The mitigation should rule out an 'adverse effect on the integrity' (AEOI) of the European designated sites that are included within the Essex Coast RAMS from increased recreational disturbance.



The Council's Appropriate Assessment outlines the applicant's illustrative SANG Strategy. The SANG is to be combined with a financial contribution in line with the Essex Coast RAMS requirements to fund "offsite" measures (i.e. in and around the relevant European Designated Sites) as part of the mitigation package for predicted recreational disturbance impacts. This package will ensure that the recreational disturbance resulting from this proposal will not have an adverse effect on the integrity of the European sites from recreational disturbance, when considered either alone or 'in combination' with other development.

The applicant is happy to provide a proportionate financial contribution in line with the Essex Coast RAMS requirements to ensure that this proposal will not have an adverse effect on the integrity of the above European sites from recreational disturbance, when considered 'in combination' with other development.

The Council is satisfied with the proposed mitigation indicated above which could be secured by planning condition/legal agreements and detailed at reserved matters stage.

#### Historic Environment

The applicant has submitted a Heritage Statement as required by the NPPF to describe the significance of any heritage assets affected.

Paragraph 193 of the NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification.

Setting is defined in Annex 2 of the NPPF as "the surroundings in which a heritage asset is experienced...elements of a setting may make a positive or negative contribution to the significance of an asset." Historic England add the importance of setting lies in what it contributes to the significance of the heritage assets. This depends on a wide range of physical elements within, as well as perceptual and associational attributes pertaining to the heritage asset's surroundings. Where the significance of a heritage asset has been compromised in the past by unsympathetic development affecting its setting, to accord with NPPF policies, consideration still needs to be given to whether additional change will further detract from, or can enhance, the significance of the asset. Negative change could include severing the last link between an asset and its original setting.

Saved Policy EN23 seeks to resist development proposals that would adversely affect the setting of listed buildings and Saved Policy EN29 resists development that will adversely affect nationally important archaeological sites and their setting. Scheduled Ancient Monuments are referred to in paragraph 6.142 of the supporting text for the latter policy. Draft policies PLA6 and PLA8 in the emerging Local Plan similarly give protection to the setting of listed buildings and scheduled ancient monuments as heritage assets.

#### Scheduled Ancient Monument (SAM)

The proposed development is located to the west of the ruined remains of old St Marys Church which is designated as a Scheduled Ancient Monument (SAM).

Historic England has confirmed the extant remains of the church are very slight and the churchyard is now a paddock. The SAM is located in the small hamlet of Mistley Heath, on the edge of Mistley and on the edge of open arable farmland, with modern housing encroaching from the north-west. Historic England conclude that whilst the proposed development would intrude into the setting of the ruined church, if opportunities are taken to maximise public open space and appropriate landscaping on the eastern edge of the proposed development they judge that the harm would be slight and as such the harm should be weighed against any public benefits of the proposed development in line with paragraph 196 of the NPPF.



The planting shown is purely indicative at this stage and landscaping is not for formal consideration. However, the indicative layout plan submitted shows along the eastern boundary of the site a 80m landscaped buffer to assist in preserving the setting of the SAM by maintaining the separation of the built form from the ruined church. It is therefore considered that the concerns raised in relation to the encroachment of the development into the setting of the SAM can be satisfactorily addressed at reserved matters stage and there is therefore no objection in this respect.

This would lessen the slight degree of harm identified by Historic England, which should be weighed against any public benefits of the proposal in line with paragraph 196 of the NPPF.

#### Listed Buildings

The Grade II Dovehouse Farmhouse is circa 560 metres to the south of the application site. This is a farmhouse that has a rural agricultural setting and the nature of this development will result in a change to this wider setting. However, due to the large field parcel between the application site and the listed building it will continue to be experienced to the north in an agricultural context. Impacts are further mitigated by the easement buffer, planting along the southern boundary of the site, and restricting the height of the development to a maximum of two storeys.

The proposal would therefore preserve the setting of nearby listed buildings.

#### Archaeology

The NPPF states where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.

ECC-Archaeology state that a Desk Based Assessment has been submitted with the application which summarises the results of previous work that has been carried out on site and the results of archaeological evaluation on the adjacent site. The work carried out so far provides enough information on which to assess the potential for further archaeological remains within the development site. This should be considered as high for further postmediaeval periods and moderate for prehistoric and medieval.

As a result they recommend a further programme of archaeological evaluation works if permission was granted. This requirement would be secured by condition.

#### Historic Environment Planning balance

As detailed above the proposal would result in a slight degree of harm to the significance of the Scheduled Ancient Monument 'Ruins of Old St Marys Church' by virtue of the encroachment of the development into its setting. Paragraph 196 of the NPPF states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

The public benefits of the proposal in relation to provision of new housing, affordable housing, and the economic benefits in relation to construction jobs and household expenditure outweigh the less than substantial harm to the significance of the setting of the designated heritage asset.

#### Landscape Impact

There will be no harm to trees or hedgerows as the site is currently in agricultural use and has no trees or other vegetation in the main body of the land. Boundary hedgerows will not be affected.

The supporting text to emerging policies SPL1 and SPL2 of the Draft Local Plan advises that outside the Settlement Development Boundaries, new development will be subject to strict control to protect and enhance the character and openness of the countryside. Amongst other things



saved policy QL9 of the Local Plan and emerging policy SPL3 of the Draft Local Plan state that new development should make a positive contribution to the quality of the local environment and enhance local character. Saved Policy EN1 of the Local Plan and emerging policy PPL3 of the Draft Local Plan state that the quality of the district's landscape and its rural character will be protected and where possible enhanced. Development which would significantly harm landscape character or quality will not be approved.

Consistent with this paragraph 170 of the Framework states that planning policies and decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside and the wider benefits from natural capital and ecosystem services.

In order to assess the impact of the development proposal on the local landscape character the applicant has submitted a Landscape and Visual Assessment (LVIA). The Landscape and Visual Impact Assessment has been carried out in accordance with Landscape Institute and Institute of Environmental Management and Assessment guidance contained in the Guidelines for Landscape and Visual Impact Assessment Third Edition 2013.

The document describes existing landscape character and qualities of the landscape. It identifies and records the potential impact of the development on the character of the landscape and the way that it is perceived and enjoyed by the public. Initially it should be noted that section 2.1 of the LVIA states that the site forms part of the more recent residential areas that form New Mistley. This is incorrect: the application site is agricultural land adjacent to development currently in progress. Additionally section 2.2 makes reference to the harsh urban edge where Rigby Avenue abuts the adjacent land. The softening of the settlement edge has been addressed by the soft landscaping associated with the approved development currently under construction.

The LVIA, incorrectly, states in section 2.26 that the site forms part of the wider Harwich Road Development and makes reference to the opportunity to achieve a soft landscaped edge. This opportunity has already been taken and will be implemented as part of the development currently in progress. The current development proposal is not required to achieve this benefit. In any case the first bullet point in section 3.4 of the LVIA makes reference to the limited opportunities for tree planting to screen the site because of the presence of a gas main. It is unlikely that any significant planting will be permitted close to the existing gas main.

Whilst the LVIA does not inaccurately quantify the value of the local landscape and its visual qualities it does not fully recognise or give sufficient weight to the intrinsic value of countryside and the need for it to be protected for its own sake. The development of the land would result in permanent harm to both the character and appearance of the local landscape character primarily in the immediate environs of the development site. The reduction in the separation distance between the development and the Essex Way Public Right of Way (PROW) would significantly affect users enjoyment of the route, experience of being within the countryside and that of relative tranquillity. It is therefore considered that the development will have an overbearing impact on the use and enjoyment of the Essex Way.

In terms of the proposed soft landscaping if it were possible for the proposed soft landscaping to be carried out close to the Gas Main, as proposed on the Landscape Masterplan ref 6558/ASP3 (Rev E) then this would create a strong landscape buffer on the southern boundary of the application site. However, it should be noted that the National Grid document provides guidance on what may be able to be planted subject to an easement being obtained from them to do so. Whilst it would appear reasonable to assume that a scheme that was put forward by the developer, in accordance with those guidelines would be approved, it is yet to be seen whether or not they will grant an easement for the proposed planting. Without the easement being in place it is not possible to guarantee that the proposed planting can be secured.

It is accepted that from the more distant viewpoints the visual impact of the development will not be significant. Nevertheless the change in character of the land is both permanent and significantly harmful.



On balance, in landscape terms, it is considered that the development proposal would, if approved and implemented, contribute to the gradual urbanisation of the local landscape character and would appear as an encroachment into the open countryside thereby eroding the open space between the hamlet of Mistley Heath and Mistley and the soft transition from the loose-knit rural character of development in Mistley Heath to the more higher density character of built form present in Mistley. Consequently the development would fail to protect the character, openness and landscape quality of the countryside and as a consequence would result in significant harm to the immediate area and the rural setting to Mistley.

### Design/Layout

Landscaping, layout, scale and appearance are reserved for later consideration.

An indicative layout has been provided but is not for formal determination at this stage.

The proposal has been designed to accord with the Essex Design Guide and provides a continuity of the scheme under construction to the north. The submitted indicative plan shows that the layout of the proposed development would reflect the character and density of the development to the north whilst providing linkage through to the existing public right of way network to the south. As stated above, in order to preserve the setting of the SAM a landscape buffer is proposed along the eastern boundary of the site.

The proposal is for up to 100 dwellings on a total of 6.5ha of land (excluding the land required for access from Harwich Road though the Phase 1 site). This gives a density of development of approximately 15 dph which is an acceptable density for this location abutting a collective town/urban settlement and recognising the need to promote an efficient use of land. Such a density would enable compliance with policy standards under saved policy HG9 for private amenity space and parking provision in accordance with the adopted parking standards.

### Residential Amenity

Only access is included for determination at this stage with the access being provided through the housing development under construction to the north of the site. It is not considered that the harm to the amenity of future residents of that development, from increased comings and goings and vehicle noise associated with the proposed dwellings, would be so significant as to justify refusing planning permission on these grounds. The indicative layout plan shows sufficient spacing between the proposed properties and those dwellings under construction to the north to avoid and adverse impacts on amenity in respect of overlooking or loss of outlook. No part of the development abuts currently occupied development in Mistley.

The indicative layout plan also shows that the site can accommodate 100 units arranged in a manner to comply with the minimum back to back distances to protect future resident's privacy and with garden size commensurate with the requirements of saved policy HG9 (75 sqm for 2 bed properties and 100sqm for 3 bed units and above).

Disruption, dust and noise during construction can be controlled and minimised by submission of a Construction Method Statement as recommended by TDC Environmental Protection and this can be secured via condition in the interests of amenity for existing residents.

There are not therefore any overriding amenity concerns relating to the principle of development or the vehicular access.

### Access and Highway Safety

Submitted with the application is a Transport Assessment which concludes that:

- Safe access and egress into the site can be provided from Harwich Road, via the newly constructed T junction onto Harwich Road through the new development to the north; and
- The site access junction and the adjacent junction on Heath Road/Harwich Road would operate well within capacity with the proposed development present in 2023.



The Highway Authority has assessed the proposal and has no objection subject to several requirements relating to estate visibility splays, footway/access widths, position of refuse stores, improvements to the PROWs crossing the site etc. These requirements can be secured by way of condition or during the assessment of any subsequent detailed application. Residential travel packs are considered reasonable for a development of this scale to encourage use of more sustainable modes of transport and would also be secured via condition.

The proposal is therefore considered acceptable in terms of access and highway safety subject to the above mentioned requirements.

#### Flood Risk

The site lies within Flood Zone 1 (low risk) and is not identified to be at risk of surface water flooding.

As a major development ECC as Lead Local Flood Authority have been consulted on the proposed flood risk assessment and surface water drainage strategy to ensure that the proposal will not increase flood risk outside of the site. They have raised no objection subject to the imposition of conditions and informatives.

Similarly, Anglian Water has confirmed that there is sufficient foul drainage and waste water capacity for the development.

#### Legal Obligations

The NPPF states Local Planning Authorities shall consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be sought where they meet all of the following tests: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

Saved Policy QL12 and draft Policy PP12 require that new development is supported by the necessary infrastructure which includes education provision.

Saved Policy COM26 states where necessary planning permission will only be granted for residential developments of 12 or more dwellings if land and/or financial contributions are made to provide the additional school places that will be needed to service the development. Draft Policy PP12 states planning permission will not be granted for new residential development unless the individual or cumulative impacts of development on education provision can be addressed, at the developer's cost, either on-site or through financial contributions towards off-site improvements.

ECC Education confirms the following contributions;

#### Early Years and Care

- For Essex County Council to meet its statutory duties it must both facilitate sufficient places to meet free childcare entitlement demand and also ensure a diverse range of provision so that different needs can be met. An additional 9 places would be required therefore a developer contribution of £156,798, index linked to April 2018, is sought to mitigate its impact on local EY&C provision.

#### Primary Education

- This proposed development is located within the priority admissions area of Mistley Norman Church of England Primary School which has capacity for 105 pupils which is part of the Tendering Group 6 Primary Forecast Group set out in Essex County Council's document 'Commissioning School Places in Essex'. The School is expected to be full by the academic year 2021/22 with a deficit of 46 places forecast for the Tendering Group 6 area.



- The demand generated by this development would be in addition to this demand and therefore a project to provide additional school capacity will be needed, thereby, a developer contribution of £458,430 index linked to April 2018, is sought to mitigate its impact on local primary school provision.

### Secondary Education

With regards to secondary education needs, this proposed development is located within the priority admissions area of Manningtree High School which is, for the purposes of forecasting part of the Tendring Secondary Group 4 (set out in Essex County Council's document 'Commissioning School Places in Essex'). The School was full as of the September 2018 intake and is forecast to rise by 61 the academic year 2020/21. Therefore a developer contribution of £464,280, index linked to April 2018, is sought to mitigate its impact on local secondary school provision.

### School Transport

Essex County Council will not be seeking a school transport contribution.

### Healthcare

NHS England have confirmed that the two local GP practices do not have capacity for the residents resulting from this proposal and request a contribution of £34,684 to mitigate the impacts of the proposal.

### Affordable Housing

Saved Policy HG4 requires large residential developments to provide 40% of new dwellings as affordable housing for people who cannot otherwise afford to buy or rent on the open market. Draft Policy LP5, which is based on more up to date evidence on viability, requires 30% of new dwellings on large sites to be made available for affordable or Council Housing.

TDC Housing note from the indicative layout that the applicant has accounted 30% affordable housing provision which is in line with the Council's requirements.

The applicant has agreed to provide 30% affordable housing on site as required in the emerging Local Plan. The submitted Affordable Housing Statement suggests 7 x 1 bed properties, 18 x 2 bed properties, 4 x 3 bed properties for affordable rent and shared ownership. TDC Housing have confirmed they are happy with the proposed mix of tenure for affordable housing on this development.

### Open Space

Saved Policy COM6 and Draft Policy HP5 require large residential developments to provide at least 10% of land as public open space or otherwise make financial contributions toward off-site provision. TDC Open Space confirm the substantial local deficit in equipped play. They request a financial contribution towards improvement of the existing play area at Stourview Close.

### Protected Habitats/RAMS

As stated above, 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 Colne Estuary SPA and Ramsar site, mitigation measures will need to be in place prior to occupation. These would be in the form of the SANGS strategy and a financial contribution of £122.30p per dwelling.

An unfinished draft S106 has been provided which aims to secure the provision of the legal obligations outlined above. As such it is the developer's intentions to meet these requirements.



However, in the absence of a completed S106 such obligations cannot be secured against the permission and this will therefore be a reason for refusal.

### Other Considerations

There is a gas main in the south of the site. The applicant is aware of its existence and has been in discussions with Cadent on this matter. Cadent have been consulted as part of this application but no response has been received. The indicative layout plan shows that the built form will be located outside of the identified buffer zones on the HSE PADHI mapping tool. A consultation on the HSE PADHI results in a 'do not advise against' development stance.

Mistley Parish Council strongly objects to both planning applications - for the following reasons: (1) the Parish Council concurs with the statement in the pre-application advice in that the development is outside the existing and proposed settlement boundary; (2) over-development of the area; (3) an additional 100 dwellings would result in a significant increase of traffic and put pressure on the limited resources of local doctors and schools; (4) the application is contrary to the undertaking in the application for phase one of the development by the applicant and would have an adverse environmental impact by impinging on the Essex Way; and (5) the Local Planning Authority currently has significantly more than a five-year land supply.

27 letters of objection have been received from local residents outlining the following concerns;

- development is outside of the SDB
- area has seen many major applications and local infrastructure is under severe strain
- local road network cannot cope with the additional traffic
- huge increase in traffic on the A120 and Horsley Cross Roundabout
- Adverse impact upon rural landscape impact/development represents urban sprawl
- Increased congestion at Manningtree and Mistley Train Station and Manningtree Crossing
- Building on greenfield land in close proximity to the Essex Way
- Additional light pollution
- Negative impact on the SAM
- No demand for extra houses in the area

### Conclusions

Saved Policy QL1 sets out a spatial strategy for Tendring that seeks to direct most new development to the larger urban areas, but allows limited development within the smaller towns and villages where accessibility to employment, services, and public transport is maximised. Draft Policy SPL2 confirms that within settlement development boundaries there will be a general presumption in favour of new development, subject to detailed consideration against other relevant Local Plan policies.

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.

Officers consider that the emerging Local Plan is progressing well, the core planning principles under paragraph 15 of the National Planning Policy Framework (NPPF) that development should be genuinely plan-led apply and the Council should actively manage patterns of growth is therefore awarded significant weight. As such therefore it is considered that further development in this location would be contrary to Saved Policy QL1 and Draft Policy SPL2 and harmful to the landscape character. Given the positive progress of the Local Plan Officers consider this development to be unsustainable and contrary to the development plan.

A completed Section 106 obligation to secure the relevant contributions towards education, healthcare, RAMS, public open space and affordable housing has not been provided and this represents a second reason for refusal.



## 6. Recommendation

Refusal

## 7. Reasons for Refusal

- 1 The proposal seeks outline planning permission for the erection of 100 dwellings and is contrary to the provisions of The National Planning Policy Framework (2019), Saved Policies QL1 and EN1 of the Adopted Tendring District Local Plan (2007) and Emerging Policies SPL1, SPL2, SPL3 and PPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).

Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The application site is not allocated for any form of development and falls outside of the defined settlement development boundary in both the adopted and the emerging Local Plan. Saved Policy QL1 sets out a spatial strategy for Tendring that seeks to direct most new development to the larger urban areas, but allows limited development within the smaller towns and villages where accessibility to employment, services, and public transport is maximised. Emerging Policy SPL2 confirms that within settlement development boundaries there will be a general presumption in favour of new development, subject to detailed consideration against other relevant Local Plan policies.

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.

Officers consider that the emerging Local Plan is progressing well, the core planning principles under paragraph 15 of the National Planning Policy Framework (NPPF) that development should be genuinely plan-led apply and the Council should actively manage patterns of growth is therefore awarded significant weight. As such therefore it is considered that further development in this location would be contrary to Saved Policy QL1 and Draft Policy SPL2.

The proposal is contrary to the adopted Local Plan and would conflict with the policies of the National Planning Policy Framework. The development would represent an unnecessary and piecemeal intrusion into the countryside that would have an adverse impact on the character of the area. The development proposal would, if approved and implemented, contribute to the gradual urbanisation of the local landscape character and would appear as an encroachment into the open countryside thereby eroding the open space between the hamlet of Mistley Heath and Mistley and the soft transition from the loose-knit rural character of development in Mistley Heath to the higher density character of built form present in Mistley. Consequently the development would fail to protect the character, openness and landscape quality of the countryside and as a consequence would result in significant harm to the immediate area and the rural setting to Mistley.

Overall the development would prejudice the effective and coordinated delivery of infrastructure through the plan-led process and would be disproportionate in scale for its location. The economic and social benefits of the proposed housing have been given due consideration in the overall planning balance, but the adverse effects of the development are considered to significantly and demonstrably outweigh the benefits. The proposal therefore does not constitute sustainable development.

- 2 The proposal seeks outline planning permission for up to 100 dwellings and is contrary to the provisions of The National Planning Policy Framework (2019), Saved Policies COM6, COM26, EN6, EN11a and HG4 of the Adopted Tendring District Local Plan (2007) and Draft



Policies LP5, PP12, PPL4 and HP5 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).

The National Planning Policy Framework (2019) states Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be sought where they meet all of the following tests: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

Saved Policy HG4 of the Tendring District Local Plan (2007) requires up to 40% of new dwellings on residential schemes of 5 or more units to be provided in the form of affordable housing to meet the needs of people that are unable to access property on the open market. Emerging Policy LP5 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017), which is based on more up-to-date evidence of housing need and viability, requires for developments of 11 or more dwellings, the Council expect 30% of new dwellings to be made available to Tendring District Council or an alternative provider to acquire at a discounted value for use as affordable housing, or as an alternative, the Council will accept a minimum of 10% if new dwellings are to be made available alongside a financial contribution toward the construction or acquisition of property for use as affordable housing (either on the site or elsewhere in the district) equivalent to delivering the remainder of the 30% requirement.

Saved Policy COM26 states where necessary planning permission will only be granted for residential developments of 12 or more dwellings if land and/or financial contributions are made to provide the additional school places that will be needed to service the development. Emerging Policy PP12 states planning permission will not be granted for new residential development unless the individual or cumulative impacts of development on education provision can be addressed, at the developer's cost, either on-site or through financial contributions towards off-site improvements.

NHS England have confirmed that the two local GP practices do not have capacity for the residents resulting from the proposal and request a contribution of £38, 180 to mitigate the impacts of the proposal.

Saved policy COM6 and emerging Policy HP5 state that for residential development on a site of 1.5ha and above, where existing public open space facilities are inadequate, shall provide a financial contribution towards the provision of new or improved off-site facilities to meet the projected needs of the future occupiers of the development. There is a substantial local deficit in equipped play and a financial contribution is therefore required towards improvement of the existing play area at School Lane.

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) 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.

A completed Section 106 obligation to secure the relevant contributions towards education, healthcare, RAMS, public open space and affordable housing has not been provided and is therefore contrary to the above policies.



**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 reasons for the refusal, approval has not been possible.

<b>Are there any letters to be sent to applicant / agent with the decision?</b> If so please specify:	YES	NO
<b>Are there any third parties to be informed of the decision?</b> If so, please specify:	YES	NO