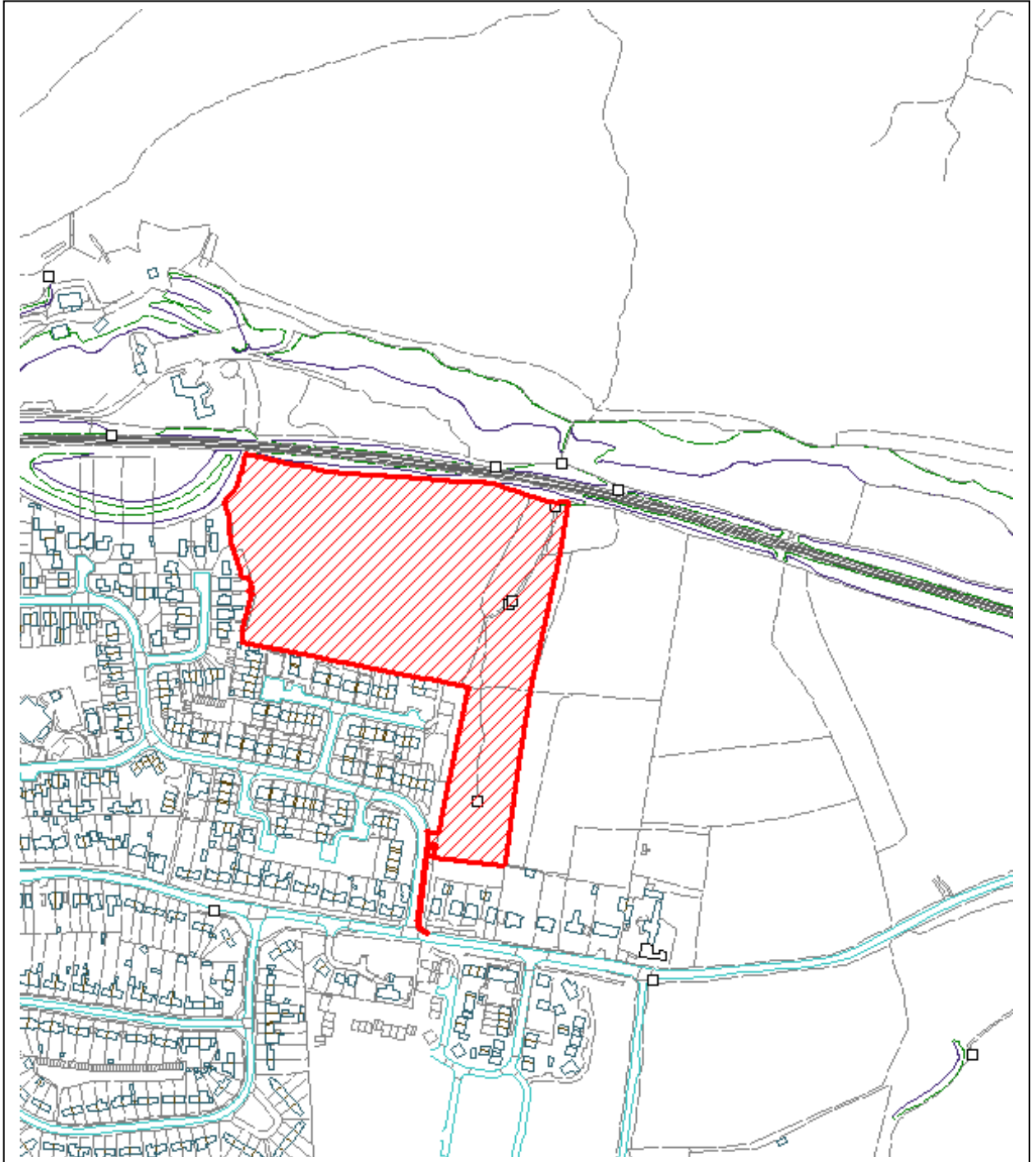


PLANNING COMMITTEE

22 October 2019

REPORT OF THE HEAD OF PLANNING

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



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Application: 18/00767/OUT

Town / Parish: Mistley Parish Council

Applicant: Rose Builders (Properties) Limited

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

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

1. Executive Summary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recommendation:

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

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

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

Subject to the conditions stated in section 8.2.

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

2. Planning Policy

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Tendring District Local Plan 2007

QL1 Spatial Strategy

QL2 Promoting Transport Choice

QL3 Minimising and Managing Flood Risk

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

HG1 Housing Provision

HG3 Residential Development within Defined Settlements

HG3A Mixed Communities

HG4 Affordable Housing in New Developments

HG6 Dwelling Size and Type

HG7 Residential Densities

HG9 Private Amenity Space

COM2 Community Safety

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

COM6 Provision of Recreational Open Space for New Residential Development

COM21 Light Pollution

COM23 General Pollution

COM26 Contributions to Education Provision

EN1 Landscape Character

EN3 Coastal Protection Belt

EN4 Protection of the Best and Most Versatile Agricultural Land

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

EN6 Biodiversity

EN6A Protected Species

EN6B Habitat Creation

EN11A Protection of International Sites European Sites and RAMSAR Sites

EN11B Protection of National Sites

EN11C Protection of Local Sites

EN12 Design and Access Statements

EN13 Sustainable Drainage Systems

EN29 Archaeology

TR1A Development Affecting Highways

TR2 Travel Plans

TR3A Provision for Walking

TR4 Safeguarding and Improving Public Rights of Way

TR5 Provision for Cycling

TR6 Provision for Public Transport Use

TR7 Vehicle Parking at New Development

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

SP1 Managing Growth

SP2 Settlement Development Boundaries

SP3 Sustainable Design

SP5 Infrastructure & Connectivity

SP6 Place Shaping Principles

SPL1 Managing Growth

SPL2 Settlement Development Boundaries

SPL3 Sustainable Design

HP1 Improving Health and Wellbeing

HP2 Community Facilities

HP3 Green Infrastructure

HP5 Open Space, Sports & Recreation Facilities

LP1 Housing Supply

LP2 Housing Choice

LP3 Housing Density and Standards

LP4 Housing Layout

LP5 Affordable and Council Housing

PPL1 Development and Flood Risk

PPL3 The Rural Landscape

PPL4 Biodiversity and Geodiversity

PPL5 Water Conservation, Drainage and Sewerage

PPL7 Archaeology

CP1 Sustainable Transport and Accessibility

CP2 Improving the Transport Network

CP3 Improving the Telecommunications Network

Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

Essex Design Guide

Status of the Local Plan

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

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

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

3. **Relevant Planning History**

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

4. **Consultations**

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

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

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

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

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

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

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

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

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

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

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

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

Natural England

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

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

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

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

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

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

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

5. Representations

5.1 No representations have been submitted.

6. Assessment

6.1 The main considerations in this instance are;

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

Proposal

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

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

Principle of Residential Development

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

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

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

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

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

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

Viability

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

- There are no straight-forward locations in which to site the attenuation basin. The best location in the north-east corner suffers from steep gradients. Slope stability will need to be adequately engineered to accommodate the basin.
- Site levels mean that some parts of the site cannot be drained by gravity to the public sewer. A pumped solution will add cost to the project and is complicated by having to provide a deep chamber.
- Retaining walls are required across the residential part of the site to deal with the challenging site levels.
- Due to the proximity of the adjacent railway line, the project may need Network Rail sign-off and retained funds to underwrite development on the site.
- Design fees are likely to be almost double the equivalent of similar sized project on level ground. Additional geotechnical fees associated with the access road would be in addition to this.

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

6.15 The applicants have submitted a detailed viability assessment detailing the costs associated with the development. The Council has instructed independent viability consultants BNP Paribas Real Estate to assess the report and to advise the Council on the likely viability or otherwise of the scheme. The Council's consultants and the applicants have held long and detailed discussions regarding viability and BNP Paribas' final report has concluded that the scheme could be made viable but only with a considerably reduced level of infrastructure contribution. Initial conclusions in October 2018 indicated that the scheme might generate a larger surplus which could support 6 affordable units. However, the applicants submitted further information in respect of sales values, construction costs as well as abnormal costs. BNP Paribas have examined and tested these costs further and following further research have accepted that many of them are reasonable. They have therefore revised their assessment of the viability of the scheme and their final conclusion is that it will generate a surplus of only £0.26m when benchmarked against their agreed nominal site value. This means that the scheme can only support a payment in lieu of £0.26m instead of the infrastructure costs contained in the S106 as set out above.

6.16 The applicants have confirmed agreement to a payment of £0.26m in lieu of the costs set out in the S106 and have agreed that on this basis, the scheme could come forward and be viable.

6.17 The scheme would generate significantly lower contributions than are required to mitigate the impacts of the scheme and if approved, the development will generate additional demands on education and healthcare that cannot be addressed through infrastructure contributions. The development would also not provide any affordable housing, even the five units previously required, which was a level of provision significantly below the policy requirements set out in both the adopted and emerging local plans.

6.18 Your officers consider that the need to provide housing, both market and affordable housing, in the district continues to be important and the loss of this site for development would impact the Council's ability to continue to meet its five year housing requirement. The site is acceptable in all other respects subject to issues of ecology discussed below and it is considered that the special circumstances of this case where viability concerns have been proven and accepted by independent experts, justifies the grant of planning permission with a revised S106 Agreement for a significantly reduced level of contribution to allow development to come forward.

Ecology

- 6.19 Paragraph 170 of the NPPF requires that decisions should contribute to and enhance the natural and local environment. Where significant harm to biodiversity cannot be avoided, mitigated or, as a last resort, compensated for, Councils should refuse planning permission. Policy EN6 of the adopted Local Plan and Policy PPL4 of the emerging Local Plan give special protection to designated sites of international, national or local importance to nature conservation but for non-designated sites still require impacts on biodiversity to be considered and thereafter minimised, mitigated or compensated for.
- 6.20 Under Regulations 61 and 62 of the Habitats Regulations, local planning authorities as the 'competent authority' must have regard for any potential impact that a plan or project might have on European designated sites. The application site is not, itself, designated as a site of international, national or local importance to nature conservation but the urban area of Manningtree, Lawford and Mistley abuts the Stour Estuary which is designated as a Special Protection Area (SPA), a Ramsar Site and a Site of Special Scientific Interest (SSSI). Whilst the application site is located more than 400 metres from the Stour Estuary and separated from it by the railway line which prevents any direct disturbance, it was considered that the development could result in potential indirect effects on the designated area. A habitat contribution of £3000 was therefore sought and agreed as part of the Section 106 for the previous application.
- 6.21 The applicants have updated their previous Habitat Regulation Assessment and Natural England was initially consulted on the proposals and raised an objection on potential impacts. However, during the course of the application Natural England introduced the RAMs process and guidance which meant that it is no longer necessary to consult with Natural England on this size of development. Natural England have therefore been re-consulted and have confirmed that because of the introduction of the of the RAMS process, it seems appropriate to follow the RAMS guidance in this instance and to not consult Natural England on this case unless the proposal changes. Their previous objection therefore no longer applies.
- 6.22 The proposals include land within the scheme for extensive on-site open space which can be conditioned. The surplus of £0.26m will contribute to the RAMs and in these circumstances it is considered that any impacts on designated sites can be adequately mitigated.
- 6.23 As before, the submitted Ecological Appraisal identifies potential on-site impacts in relation to bats, reptiles, invertebrates, breeding birds and badgers and a condition was attached to the original planning permission requiring an ecological plan to be agreed by the Council prior to the commencement of the development.
- 6.24 The RAMs contribution will be secured by Section 106 and it is proposed to retain the conditions of the earlier consent to deal with other matters of ecology and biodiversity.

Open Space

- 6.25 Policy COM6 in the adopted Local Plan and Policy HP3 of the emerging Local Plan require large residential developments to provide at least 10% of land as public open space or otherwise make financial contributions toward off-site provision. This would necessitate an area of at least 0.5ha of the land being provided as green infrastructure. The applicants have advised that some 1.4ha will be provided and that the areas of open space are to coincide with areas of wildlife sensitivity and surface water attenuation ponds. Accordingly, they will be a mixture of play space with amenity

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

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

Potential Layout, Density and Amenity

- 6.27 The application remains in outline and whilst it has been amended to include a further 2 units, it is considered that the site is large enough to accommodate the additional dwellings without unacceptable impacts. The applicant has resubmitted their land use audit which shows that the eastern strip of land would accommodate the proposed access road together with the wildlife habitat areas and the SUDs. The 72 dwellings would be located in the wider western area on approximately 3 hectares. Boundary planting is shown on all sides which could provide a visual screen between the new and existing dwellings along Stourview Avenue and Seafeld Avenue.
- 6.28 Notice has been served on the District Council as Tendring District Council owns some of the land at Stourview Avenue that would be required to create the proposed access road. Negotiations on that matter would be outside the determination of this application and, as before, the Planning Committee should consider the current application on planning grounds, irrespective of any interest that the Council, as landowner, has in the site.

Impacts on Infrastructure/Affordable Housing

- 6.29 Education: Policy QL12 in the adopted Local Plan and Policy PP12 in the emerging Local Plan require that new development is supported by the necessary infrastructure which includes education provision. Essex County Council as the Local Education Authority has been consulted on the revised planning application.
- 6.30 ECC was satisfied with the original application that there would be sufficient provision of Early Years and Childcare facilities in the area to address the needs of the development but has now advised that a contribution towards additional provision is required for the current application and requests a contribution of £112,895. In terms of primary school provision, the site sits within the priority admissions area of Mistley Norman Church of England Primary School. This school is expected to be full by the academic year 2021/22 and ECC forecasts a deficit of 46 primary school places across the Manningtree area (Tendring Group 6). In response, Essex County Council's '10 Year Plan' to meet the demand for school places alludes to the option of a one form entry expansion of Lawford Primary School for September 2020. ECC consider that an additional 21.6 places would need to be provided at an estimated total cost of £330,070 at April 2018 prices.
- 6.31 With regards to secondary education, the Priority Admissions Area School for the development would be Manningtree High School which is also expected to be full both

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

- 6.32 It is clear that additional school places will be needed as a result of this development but also that the availability of places and level of contributions have changed since the previous permission. No early years contribution was required with the 2015 planning permission and it is not considered that it would be justified to require a contribution at this stage. In terms of primary and secondary education, it is clear that the development will generate a need for additional places but these cannot be funded by the development. The extensive examination and discussions on the viability of the development has confirmed that it cannot proceed if the previous infrastructure costs are required. Whilst it is accepted that the development will place additional strain on education facilities, it is also considered that there continues to be a need for housing to come forward which this site will provide. This site is included within the settlement development boundary in the emerging Local Plan where development is acceptable and has already been agreed. However, the construction costs which were previously unknown, now mean that the site cannot contribute towards education costs if it is to be developed.
- 6.33 Health Provision: The previous application included a Healthcare contribution of £21,120 towards improvement of local surgeries. As previously outlined under Education, the current application will not be able to contribute towards these costs. There would be an inadequate surplus to fund this and other infrastructure costs.
- 6.34 Affordable housing: Policy HG4 in the adopted Local Plan requires large residential developments to provide 40% of new dwellings as affordable housing for people who cannot otherwise afford to buy or rent on the open market. Policy LP5 in the emerging Local Plan, which is based on more up to date evidence on viability, requires 30% of new dwellings on large sites to be made available for affordable or Council Housing. The policy does allow flexibility to accept as low as 10% of dwellings on site, with a financial contribution toward the construction or acquisition of property for use as Council Housing (either on the site or elsewhere in the district) equivalent to delivering the remainder of the 30% requirement. The Council accepted previously that the development should provide 5 properties to be 'gifted' to the Council (i.e. transferred to the Council or a nominated partner or trust at zero cost).
- 6.35 The Council's Housing Needs team has commented on the current application and advised that there is a high demand for housing in the Mistley area and that it would prefer to see affordable housing provided on site given the demand for housing in the area.
- 6.36 The applicants have argued that the development cannot support the provision of affordable housing on the site because of the high build costs. The Council's independent consultants have confirmed that development of the site will not be viable if affordable housing and the infrastructure costs continue to be required. As a consequence, a contribution towards affordable housing can be provided but this would be limited bearing in mind the agreed surplus of £0.26 million. It is considered however, that the surplus should be secured for affordable housing and the RAMS contribution so that the development can make some contribution to the provision of affordable housing as well as the market housing that will come forwards.

Other Material Considerations

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

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

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

Financial Contribution – RAMS

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

7. Conclusion

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

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

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

8. Recommendation

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

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

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

8.2 Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Reason - To protect highway efficiency of movement and safety.

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

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

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

8 A. No development or preliminary ground-works shall commence until a programme of archaeological trial trenching has been secured and undertaken in accordance with a Written Scheme of Investigation, which has been submitted by the applicant, and approved in writing by the Local Planning Authority. Following the completion of this initial phase of archaeological work, a summary report shall be prepared and a mitigation strategy detailing the approach to further archaeological excavation and/or preservation in situ through re-design of the development, shall be submitted to and approved in writing by the Local Planning Authority.

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

C. Following completion of the archaeological fieldwork, the applicant shall submit to the Local Planning Authority a post-excavation assessment (within six months of the completion date, unless otherwise agreed in advance with the Local Planning Authority), which will result in the completion of post-excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

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

9 No phase of development shall commence until an Ecological Mitigation Scheme and Management/Enhancement Plan has been submitted to and approved, in writing, by the Local Planning Authority. The document shall include:

- i) the recommendations contained with the Ecological Assessment (Geosphere Environmental Ltd dated 26 March 2018)
- ii) details of how biodiversity within the site will be encouraged and maintained by the development.

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

10 No development shall commence until a foul water strategy has been submitted to and approved in writing by the Local Planning Authority. No dwellings shall be occupied until the works have been carried out in accordance with the foul water strategy so approved.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.3 **Informatives**

Positive and Proactive Statement

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

Legal Agreement Informative

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

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

Highways Informatives

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

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

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

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

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

Building Regulations Informative

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

9. Additional Considerations

Public Sector Equality Duty (PSED)

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

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

Human Rights

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

Finance Implications

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

10. Background Papers

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