

## DELEGATED DECISION OFFICER REPORT

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File completed and officer recommendation:	NH	27/03/2020
Planning Development Manager authorisation:	TF	27/03/2020
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**Application:** 19/01830/FUL **Town / Parish:** Mistley Parish Council

**Applicant:** Mr Cox

**Address:** Land adjacent Lower Park The Walls Mistley

**Development:** Proposed two dwellings and amended highway access.

### **1. Town / Parish Council**

Mistley Parish Council Consider that this application should be refused on the grounds that the proposal will have an adverse affect on the character of the area and the local amenity, and the proposed development would not be sustainable.

### **2. Consultation Responses**

Essex County Council  
Archaeology  
06.01.2020

The proposed development lies within the Conservation Area of the historic settlement of Manningtree and Mistley and former designed landscaped gardens around the now demolished Mistley Hall.

Manningtree was a 13th century planned town intended as a new port. In the early nineteenth century Manningtree was a major centre of the Essex malt industry with five separate sites in operation, one lay adjacent to the proposed development.

Edward Rigby inherited the manor of Mistley, including 1500 acres of farmland, a small wharf and the village of Mistley in the later 17th century. He was succeeded by his son Richard Rigby, who set about building Mistley Hall and laid out a new village and wharf at Mistley Thorn. By 1730 the Mistley Estate had passed to his son, Richard Rigby (II), and he remodelled Mistley Hall and re-landscaped the gardens under the guidance of Horace Walpole.

The proposed development lies within the former landscaped gardens and have the potential to impact upon any surviving landscape features and potential below ground deposits associated with the gardens and possibly earlier remains.

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.

2. 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.

3. 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.

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

Further Recommendations:

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

Essex County Council  
Heritage  
06.03.2020

Following the provision of a Heritage, Landscape and Policy Supplementary Statement by the applicant, the comments outlined in the previous response still stand and they consider the proposal to be inappropriate and fails to preserve or enhance the character and appearance of the Conservation Area.

Further to this previous assessment, the following is relevant:

The proposal is located within the historic designed parkland of the now demolished Mistley Place. From the applicant's heritage statement, it is understood that the proposed development is located within the original triangular portion of land owned by the Normans upon which Mistley Place was built, located to the west of the historic road bounding Mistley Hall's parkland at its north and north west extents leading to the Stour. This road subsequently became a HaHa to Mistley Place when this initial parkland was extended following purchases of land to the east of the house.

The proposals would therefore be sited within the original 1820 gardens to Mistley Place prior to the 1844 land purchases that expanded this formal parkland to the house eastward. This parkland, combined with the larger Parkland of Mistley Hall Estate has historically constituted a separating buffer between the settlements of Mistley and Manningtree and continues to do so. The proposals would compromise the open character of this parkland which contributes significantly to the Conservation Area and is of special interest.

The information that was submitted in association with the application has been fully considered by the Highway Authority together with the site history. A site visit and various email communications regarding the above site took place, between 2015 and 2017 with the Highway Authority. A speed survey was undertaken, and the 85 percentile recorded vehicle speeds (wet weather) were noted to be:- Eastbound - 32mph; Westbound - 33mph these results allows for the site restriction / compromise between highways and heritage to retain the listed historic brick wall, therefore:

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

1. Prior to occupation of the development, the road junction / access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 43 metres to the West and 2.0 metres by 4.3 metres to the East, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the road junction / access is first used by vehicular traffic and retained free of any obstruction at all times. Reason: To provide adequate inter-visibility between vehicles using the road junction / access and those in the existing public highway in the interest of highway safety in accordance with policy DM1.
2. Prior to occupation of the development a vehicular turning facility, of a design to be approved in writing by the Local Planning Authority shall be constructed, surfaced and maintained free from obstruction within the site at all times for that sole purpose. Reason: To ensure that vehicles can enter and leave the highway in a forward gear in the interest of highway safety in accordance with policy DM1.
3. No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary. Reason: To avoid displacement of loose material onto the highway in the interests of highway safety in accordance with policy DM1.
4. Prior to the occupation of any of the proposed dwellings, the proposed private drive shall be constructed to a width of 6 metres for at least the first 6 metres from the back of Carriageway / Footway / Highway Boundary and provided with an appropriate dropped kerb crossing of the footway/verge as indicated on Block Plan drawing no. 3015-03. Reason: To ensure that vehicles can enter and leave the highway in a controlled manner and to ensure that opposing vehicles can pass clear of the limits of the highway, in the interests of highway safety in accordance with policy DM1.
5. Any gates provided at the vehicular access shall be inward opening only and shall be set back a minimum of 6 metres from the back edge of the footway / cycleway or where no provision of footway/cycleway is present, the carriageway. Reason: To enable vehicles using the access to stand clear of the carriageway whilst gates are being opened and closed and to allow parking off street and clear from obstructing the adjacent footway/cycleway/carriageway in the interest of highway safety in accordance with policy DM1.
6. No development shall take place, including any ground works

or demolition, until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved plan shall be adhered to throughout the construction period. The Plan shall provide for:

- i. the parking of vehicles of site operatives and visitors
- ii. loading and unloading of plant and materials
- iii. storage of plant and materials used in constructing the development
- iv. wheel and underbody washing facilities

Reason: To ensure that on-street parking of these vehicles in the adjoining streets does not occur and to ensure that loose materials and spoil are not brought out onto the highway in the interests of highway safety and Policy DM1.

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

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

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

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

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

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

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

Informative 1: 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](mailto: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.

### 3. Planning History

01/01247/OUT	Erection of three houses, formally part of the garden of Lower Park	Withdrawn	17.02.2005
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### 4. Relevant Policies / Government Guidance

*NPPF National Planning Policy Framework February 2019*

*National Planning Practice Guidance*

*Tendring District Local Plan 2007*

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
HG6	Dwelling Size and Type
HG7	Residential Densities
HG9	Private Amenity Space
HG14	Side Isolation
EN1	Landscape Character
EN2	Local Green Gaps
EN3	Coastal Protection Belt
EN5	Areas of Outstanding Natural Beauty (AONB's)
EN5A	Area Proposed as an Extension to the Suffolk Coasts and Heaths AONB
EN6	Biodiversity
EN6A	Protected Species
EN11A	Protection of International Sites European Sites and RAMSAR Sites
EN17	Conservation Areas
TR1A	Development Affecting Highways

TR7	Vehicle Parking at New Development
COM6	Provision of Recreational Open Space for New Residential Development
<i>Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017)</i>	
SPL3	Sustainable Design
LP2	Housing Choice
LP3	Housing Density and Standards
LP4	Housing Layout
PPL1	Development and Flood Risk
PPL2	Coastal Protection Belt
PPL3	The Rural Landscape
PPL4	Biodiversity and Geodiversity
PPL6	Strategic Green Gaps
PPL8	Conservation Areas
HP5	Open Space, Sports & Recreation Facilities

Local Planning Guidance

*Essex County Council Car Parking Standards - Design and Good Practice*

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

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

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

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

In relation to housing supply:

The NPPF requires Councils to boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years' worth of deliverable housing land against their projected housing requirements (plus an appropriate buffer to ensure choice and competition in the market for land). 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, whilst housing delivery over the last three years has exceeded requirements, the supply of deliverable housing sites going forward that the Council can demonstrate still 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 refers to the land adjacent to Lower Park, The Walls, Mistley. The application site is located outside the Settlement development boundary, located within the Manningtree and Mistley Conservation Area, the site is located within an Area of Outstanding Natural and it is within a Coastal Protection Belt.

### Proposal

This application seeks planning permission for the erection of two dwellings and amended highway access.

### Assessment

The main considerations for this application are:

- Principle of development
- Scale, Layout and Appearance
- Impact on Residential Amenities
- Highway Consideration and Parking Provision
- Heritage Impact
- Coastal Protection Belt
- Flood Risk
- Archaeology
- Legal Obligations - Open Space
- Habitat Regulations Assessment

#### 1. Principle of development

The application site lies outside of a Settlement Development Boundary as defined within the Adopted Tendring Local Plan 2007 and the Emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.

Saved Tendring District Local Plan (2007) Policy QL1 sets out that development should be focussed towards the larger urban areas and to within development boundaries as defined within the Local Plan. These sentiments are carried forward in emerging Policy SPL1 of the Publication Draft.

The National Planning Policy Framework 2019 (NPPF) requires Councils to boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years' worth of deliverable housing land against their projected housing requirements (plus an appropriate buffer to ensure choice and competition in the market for land, account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible, or housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, paragraph 11 d) of the NPPF requires applications for housing development needing to be assessed on their merits, whether sites are allocated for development in the Local Plan or not.

At the time of this report, the supply of deliverable housing sites that the Council can demonstrate falls below 5 years and so the NPPF says that planning permission should be granted for development unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework as a whole. Determining planning applications therefore entails weighing up the various material considerations. The housing land supply shortfall is relatively modest when calculated using the standard method prescribed by the NPPF. In addition, the actual need for housing was found to be much less than the figure produced by the standard method when tested at the recent Examination in Public of the Local plan. Therefore, the justification for reducing the weight attributed to Local Plan policies is reduced as is the weight to be given to the delivery of new housing to help with the deficit.

Whilst it is recognised that there would be conflict with Saved Policy QL1 and Emerging Policy SPL1 in terms of the site being sited outside the settlement development boundary, as stated above, in the context of the 5 year housing land supply paragraph 11 d) of the NPPF requires applications for housing development to be assessed on their merits, whether sites are allocated for development in the Local Plan or not and it is important to consider whether any circumstances outweigh this conflict.

Therefore, at this present time, it is correct to assess the housing development on its merits against the sustainable development objectives set out within Paragraph 8 of the NPPF. The economic objective, a social objective and an environmental objective are therefore assessed below.

#### Economic:

It is considered that the proposal for two dwellings would have a modest contribution economically to the area, for example by providing employment during the construction of the development and from future occupants using the nearby facilities, and so meets the economic arm of sustainable development.

#### Social:

The NPPF seeks to support a prosperous rural economy. It promotes sustainable transport and seeks a balance in favour of sustainable transport modes to give people a real choice about how they travel recognising that opportunities to maximise solutions will vary between urban and rural areas. With regard to the social dimension, this means supporting strong, vibrant and healthy communities by supplying the housing required to meet the needs of present and future generations and creating a high quality environment with accessible local services.

The nearest settlement is Manningtree, the Settlement Development Boundary of which is approximately 68 metres to the west, and within the Established Settlement Hierarchy (2016) it is a smaller urban settlement. Urban settlements are considered to offer the most sustainable locations for significant level of growth offering a wide range of local services and good access to transport links.



In terms of the social role, the location of the site is close to the edge of Manningtree where there are a range of services accessible on foot and by regular public transport, the location therefore performs well and meets the social objective of sustainable development.

Environmental:

The environmental role is about contributing to protecting and enhancing the natural built and historic environment which is considered below.

Paragraph 8 of the National Planning Policy Framework 2019 (NPPF) sets out the overarching objectives for achieving sustainable development, one being the environmental objective which requires the planning system to contribute to protecting and enhancing our natural, built and historic environment. Furthermore, Paragraph 127 of the NPPF requires that development should respond to local character and history, and reflect the identity of local surroundings. It goes on to say that local distinctiveness should be promoted and reinforced. Saved Policy QL9 and EN1 of the Tendring District Local Plan (2007) and Policy SPL3 and PPL3 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) seeks to ensure that development is appropriate in its locality and does not harm the appearance of the landscape. Outside development boundaries, the Local Plan seeks to conserve and enhance the countryside for its own sake.

The proposed development is located within an area designated as a 'Local Green Gap' within the Tendring District Local Plan 2007 and as a 'Strategic Green Gap' in the Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017. Policy EN2 of the adopted Tendring District Local Plan 2007 Local Plan states Local Green Gaps will be kept open, and essentially free of development in order to prevent coalescence of settlements, and to protect their rural setting. It goes on to say that minor development proposals may be permitted if they do no harm, individually or collectively, the purposes of a Local Green Gap or to its open character. Furthermore, paragraphs 6.9 and 6.10 of adopted Policy preamble expand on the purposes of the Local Green Gaps. In particular one of the purposes is to maintain separation between urban areas and free-standing smaller settlements that surround them and by conserving the countryside between residential settlements to preserve the open character of these important breaks between settlements. Draft Policy PPL6 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017 echo the aims of the saved policy stating that the council will not permit any development which would result in the joining of settlements or neighbourhoods, or which would erode their separate identities by virtue of their close proximity. Planning permission may be granted where the development would not compromise the open setting between settlements or neighbourhoods.

The application site is situated in the Stour Valley System Landscape Character Area (LCA) directly adjacent to, and overlooking, The Stour Estuary Marshes LCA as defined and described in the Tendring District Council Landscape Character Assessment. One of the key characteristics of the Stour Valley System is; as defined in the document 'the southern slopes and scenic tributary valleys of the Stour, form a setting to one of the most important wildlife estuaries in Europe and a setting to the Suffolk Coast and Heaths Area of Outstanding Natural Beauty (AONB)'. It is therefore vitally important that planning permission is not granted unless it can be demonstrated that harm will not be caused to the scenic beauty of the area.

The companion document for the above Landscape Character Assessment entitled 'Guidance for the Built Environment' emphasises the importance of protecting the landscape for its value as the rural backdrop and setting for the Suffolk Coast and Heaths AONB. It is important to note that at the present time the application site is adjacent to land that has been proposed, by Natural England, as an extension to the AONB.

The area identified for the construction of the dwellings is a neglected lawn area with established trees and other boundary vegetation. This part of the site can be viewed from New Road to the south and new soft landscaping on this boundary with Mistletoe Place Park would be required to screen the dwellings from this aspect

In order to show the potential impact of the development proposal on the area the applicant has provided a document entitled 'Desk Review of Landscape and Visual Effects'. This document sets out the baseline qualities of the existing landscape, quantifies the harm likely to result from the development of the land and identifies the extent of mitigation required to remediate harm. In essence the report acknowledges that there will be a low level of harm but that mitigation, by way of the positioning and design of the dwellings, along with new soft landscaping makes the development acceptable.

Whilst not disputing the findings of the 'Desk Review of Landscape and Visual Effects' it is considered that development in this location would contribute to the gradual erosion of the countryside and the degradation of the Mistley and Manningtree Conservation Area. It is therefore considered that the application would set a precedent for development which would harm the local landscape character.

The character of the site itself would be altered to a more urban form of development than currently exists. For these reasons the character of the proposed development would be at odds with the open quality of the landscape. This has an important role in separating the built up areas of the immediate locality and thereby maintaining their separate character. The proposal would not accord with saved policy EN2 of the adopted Local Plan in terms of the Local Green Gap or with saved policies EN1 and QL9 of the adopted Local Plan which require that the settings and character of settlements are conserved.

For these reasons, the proposal would unacceptably harm the character and appearance of the area. Significant weight must be attributed to this harm due to the location of the site within the open landscape and the strategic value of the Green Gap. In applying the tilted planning balance, the adverse impacts identified would significantly and demonstrably outweigh the benefits of the development including taking into account the extent and validity of the housing shortfall and its effect on the weight to be attached to development plan policies.

### Trees and Landscaping

In terms of trees and other vegetation on the application site and adjacent land, it should be noted that the trees are afforded formal legal protection because of their position within the Mistley and Manningtree Conservation Area ' all trees with a stem diameter greater than 75mm at a point 1.5m from ground level are protected. It appears that the creation of the new access road to the dwelling would necessitate the removal of large areas of established vegetation that currently provide good screening to the existing dwelling from view from The Walls. The positioning of the proposed dwelling would not result in the removal of important trees, however several moderated quality trees would need to be removed to create the new vehicular access to the site.

In order to show the condition of the trees and the extent to which they are a constraint on the development potential of the land the applicant has provided an Arboricultural Impact Assessment (AIA), as part of a detailed tree survey and report. The report is in accordance with BS5837: 2012 Trees in relation to design, demolition and construction: Recommendations. The report shows those trees to be retained and how they will be physically protected for the duration of the construction phase of any planning permission that may be granted.

Although the development of the land would necessitate the removal of several trees on the application site these are primarily Holly, Laurel, and hedging conifers whose contribution to the character and appearance of the conservation area is moderate to low and could be relatively easily replicated by new planting. In this respect, and simply in terms of the impact of the development on trees and other vegetation; the development proposal is not significantly harmful.

## 2. Scale, Layout and Appearance

The adopted Tendring District Local Plan (2007) "Saved" Policies QL9, QL10 and QL11 seek to ensure that all new development makes a positive contribution to the quality of the local environment and character, by ensuring that proposals are well designed, relate satisfactorily to their setting and are of a suitable scale, mass and form. These sentiments are carried forward in

Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).

The plans submitted demonstrate that there are two house types, type 1 and type 2. House 1 comprises a two storey contemporary style dwelling with a mono-pitch five degree roof slope as a green roof to the wings with a central flat roof with parapet detail. The proposed wall covering is timber cladding with a variation of fenestration including first floor balconies incorporated into the design. A double garage is proposed integral within the house. House 2 follows a contemporary style approach with a two storey dwelling with mono-pitch five degree roof slope, green roofs to the wings with a flat roof area with parapet to the centre. Again timber boarding is proposed with balconies with interesting and varied fenestration included in the design detailing. For House 2 a detached mono-pitch double garage is also proposed. The provision of the mono-pitch roof elements provides for the opportunity within the central flat roof sections for solar installation to maximise on renewable energy sources.

Under planning reference 19/00341/FUL permission was granted for a new detached out-building, extensions, alterations & re-modelling of existing two-storey dwelling (following demolition of existing single storey extensions) utilising existing vehicular access. The application involved the remodelling of Lower Park House to a more contemporary style approach. Therefore it is considered that the use of boarding as approved for Lower Park House, will be complimentary to the material specification of the proposed dwellings with there also being examples of boarding along the street scene. It is therefore considered that design and appearance of the proposed dwellings is acceptable.

It is considered that the proposed dwellings would not create a cramped form of development as it would provide important gaps to both sides in excess of the minimum standards set out within Policy HG14.

Policy HG9 of the Saved Tendring Local Plan 2007 states that private amenity space for a dwelling of three bedrooms or more should be a minimum of 100sqm. The submitted plans demonstrate that both dwellings can accommodate more than 100sqm.

### 3. Impact on Residential Amenities

Policy QL11 of the Saved Plan states that amongst other criteria, 'development will only be permitted if the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties'. These sentiments are carried forward in Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).

There are no neighbouring dwellings to the west of the application site however to the north east if 'Lower Park'. Due to the neighbouring dwelling being located approximately 24 metres away from the proposed dwelling, it is considered that the development will not cause any impact upon neighbouring amenities.

### 4. Highway Consideration and Parking Provision

Essex Highway Authority have been consulted on this application and have stated that a site visit and various email communications regarding the above site took place, between 2015 and 2017 with the Highway Authority. A speed survey was undertaken, and the 85 percentile recorded vehicle speeds (wet weather) were noted to be:- Eastbound - 32mph; Westbound - 33mph these results allows for the site restriction / compromise between highways and heritage to retain the listed historic brick wall. The authority therefore have no objection to the proposal subject to conditions relating to the visibility splays, vehicle turning facility, no unbound materials, construction of the private drive, gates at the vehicular access, construction method statement, parking spaces, garages and cycle parking. The parking spaces and garage measurement conditions will not be imposed as they are in line with Essex Parking Standards. The cycle parking condition will not be imposed as the plans demonstrate that there is sufficient private amenity space to the rear to accommodate cycle parking.

Further, Essex Parking Standards state that there should be minimum parking provision for a dwelling with two or more bedrooms for parking spaces measuring 5.5m x 2.9m and garages should measure 7 metres by 3 metres. House type 1 comprises of a garage which measures 7.7 metres by 7 metres and there are two parking spaces serving the dwelling which both comply with Essex Parking Standards. House type 2 comprises of a garage which measures 7.4 metres by 7 metres and there are two parking spaces which comply with Essex Parking Standards. It is therefore considered that the proposal provides sufficient parking provision for both dwellings.

## 5. Heritage Impact

Paragraph 189 of the National Planning Policy Framework ("the Framework") requires applicants to describe the significance of any heritage assets affected. This requirement is retained by draft Policy PPL9 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

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 (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Policy EN17 of the Tendring District Local Plan 2007 and Policy PPL8 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) which states that development within a Conservation Area must preserve or enhance the special character or appearance of the Conservation Area.

The application site lies within Mistley and Manningtree Conservation Area. As a result the Historic Environment Team have been consulted on this application and have stated that Lower Park is noted as a 'positive building' in the conservation area appraisal and as such may be considered a non-designated heritage asset with regard to the NPPF. No Heritage Statement has been provided with the application and as such the application is not considered compliant with paragraph 189 of the NPPF.

The application site is located in an important undeveloped space in the Conservation Area and historically was the parkland associated with Mistley Place. The undeveloped form of this historic parkland forms an important part of the Conservation Area and the open space between Manningtree and Mistley. Much of the area between Manningtree and Mistley was shaped by three generations of the Rigby family as they developed the Mistley Hall Estate in the 18th and early 19th centuries. Many elements of the parkland landscape survive, including Hopping Bridge, the ornamental lake behind it and established tree planting. The historic parkland and its context/character should be safeguarded from inappropriate development to ensure it retains its special interest.

This proposal is not appropriate in principle and will fail to preserve or enhance the character and appearance of the Conservation Area. It is therefore considered that the proposal will cause less than substantial harm to a designated heritage asset and this harm should be considered in the context of the 'great weight' noted in paragraph 193 of the NPPF.

Following the Historic Environment Managers comments, the applicant provided a heritage, landscape, policy supplementary statement. The Historic Environment Team were re-consulted and stated that the comments outlined in the previous response still stand. It is considered that the proposal is inappropriate and fails to preserve or enhance the character and appearance of the Conservation Area. Further to this previous assessment, the following is relevant:

The proposal is located within the historic designed parkland of the now demolished Mistley Place. From the applicant's heritage statement, it is understood that the proposed development is located within the original triangular portion of land owned by the Normans upon which Mistley Place was built, located to the west of the historic road bounding Mistley Hall's parkland at its north and north west extents leading to the Stour. This road subsequently became a HaHa to Mistley Place when this initial parkland was extended following purchases of land to the east of the house. The

proposals would therefore be sited within the original 1820 gardens to Mistley Place prior to the 1844 land purchases that expanded this formal parkland to the house eastward. This parkland, combined with the larger Parkland of Mistley Hall Estate has historically constituted a separating buffer between the settlements of Mistley and Manningtree and continues to do so. The proposals would compromise the open character of this parkland which contributes significantly to the Conservation Area and is of special interest.

Consequently, the proposed development fails to accord with paragraph 193 of the National Planning Policy Framework (2019) and the afore-mentioned local and national planning policies.

#### 6. Coastal Protection Belt

Saved Policy EN3 of the Tendring District Local Plan 2007 and Draft Policy PPL2 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) seeks to protect the unique and irreplaceable character of the Essex coastline from inappropriate forms of development as well as seeking to improve public access to and enjoyment of the coast in accordance with the National Planning Policy Framework.

Although the proposed dwellings are set back from 'The Walls', it is considered that the introduction of two dwellings in this location is an inappropriate form of development which will cause significant harm to the landscape character of the area.

The proposal is therefore contrary to Saved Policy EN3 of the Tendring District Local Plan 2007 and Draft Policy PPL2 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).

#### 7. Flood Risk

The application site lies within Flood Zone 1 however the entrance to the site lies within Flood Zone 2 and 3.

A Flood Risk Assessment (FRA) has been submitted which sets out measures that will be used to reduce the risk to persons and property from the potential flooding. This is considered to be acceptable.

#### 8. Archaeology

The ECC Historic Environment Officer has been consulted on this application and has stated that the proposed development lies within the Conservation Area of the historic settlement of Manningtree and Mistley and former designed landscaped gardens around the now demolished Mistley Hall.

Manningtree was a 13th century planned town intended as a new port. In the early nineteenth century Manningtree was a major centre of the Essex Malt industry with five separate sites in operation, one lay adjacent to the proposed development. Edward Rigby inherited the manor of Mistley, including 1500 acres of farmland, a small wharf and the village of Misltey in the later 17th century. He was succeeded by his son Richard Rigby, who set about building Mistley Hall and laid out a new village and wharf at Mistley Thorn. By 1730 the Mistley Estate had passed to his son, Richard Rigby (II), and he remodelled Mistley Hall and re-landscaped the gardens under the guidance of Horace Walpole.

The proposed development lies within the former landscaped gardens and have the potential to impact upon any surviving landscape features and potential below ground deposits associated with the gardens and possibly earlier remains.

The officer therefore recommends that conditions should be imposed to the permission to ensure that a programme of archaeological evaluation has been secured and undertaken in accordance with a Written Scheme of Investigation. Following the completion of this, a summary report will be prepared and a mitigation strategy detailing the approach to further archaeological excavation. 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 and following the completion of the archaeological fieldwork, the applicant will need to submit a post excavation assessment.

#### 9. Legal Obligations - Open Space

Policy COM6 of the adopted Tendring District Local Plan 2007 states "For residential development below 1.5 hectares in size, developers shall contribute financially to meet the open space requirements of the development in proportion to the number and size of dwellings built".

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

Closest play areas to the development site is located at The Welcome Home Field 0.5 miles from the proposed development this play area is classified as Local Equipped Areas for But provides limited provision and is in need of up dated

Recommendation

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

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

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

#### 10. Habitat Regulations Assessment

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.

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.

The application scheme proposes a new dwelling on a site that lies within the Zone of Influence (Zol) being approximately 0.1 km away from Stour and Orwell Estuaries RAMSAR Site and SPA..

New housing development within the Zol would be likely to increase the number of recreational visitors to Stour and Orwell Estuaries and in combination with other developments it is likely that the proposal would have significant effects on the designated site. Mitigation measures must therefore be secured prior to occupation.

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

The proposal is therefore considered to be contrary to Policies EN6 and EN11a of the Saved Tendring District Local Plan 2007, Policy PPL4 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

#### 11. Other representations

Mistley Parish Council have commented on this application and recommend that the application be reduced as the proposal would have an adverse impact on the character of the area and the local amenity and the proposed development would not be sustainable.

Suffolk Coast and Heaths AONB has been consulted on this application and has stated that Lower Park is located just outside the AONB extension area that has recently been approved by Natural England's Board. The draft Designation Order is now waiting sign off from the Secretary of State. Natural England's expectation is that consideration will be given to the fact that the area has been assessed as meeting the requirements for national designation and that the area subject to the AONB Variation Order will be treated as a material planning consideration by the relevant planning authorities and that the evidence in support of the Order will be considered relevant in determining any impact of a proposed development on the area's special qualities. The AONB team broadly concurs with the consultations in the LVIA submitted to support the proposal. We are not objecting to the principle of the 2 new dwellings being built in the grounds of Lower Park. Given the sensitivity of the site's location adjacent to the AONB extension area and Stour Estuary we support the requirement to replace any trees felled to facilitate the development. This is necessary to ensure that the new dwellings remain discrete within the landscape and to help conserve the parkland character of Lower Park. If the LPA is mindful to approve this scheme, we recommend that the 1st, 3rd, 4th, 5th and 6th mitigation measures listed in section 3.2.1 of the LVIA are conditioned as part of any approval secured to help conserve the natural beauty of the adjacent AONB.

## **6. Recommendation**

Refusal - Full

## **7. Conditions / Reasons for Refusal**

- 1 Paragraph 8 of the National Planning Policy Framework 2019 (NPPF) sets out the overarching objectives for achieving sustainable development, one being the environmental objective which requires the planning system to contribute to protecting and enhancing our natural, built and historic environment. Furthermore, Paragraph 127 of the NPPF requires that development should respond to local character and history, and reflect the identity of local surroundings. It goes on to say that local distinctiveness should be promoted and reinforced. Saved Policy QL9 and EN1 of the Tendring District Local Plan (2007) and Policy SPL3 and PPL3 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) seeks to ensure that development is appropriate in its locality and does not harm the appearance of the landscape. Outside development boundaries, the Local Plan seeks to conserve and enhance the countryside for its own sake.

The proposed development is located within an area designated as a 'Local Green Gap' within the Tendring District Local Plan 2007 and as a 'Strategic Green Gap' in the Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017. Policy EN2 of the adopted Tendring District Local Plan 2007 Local Plan states Local Green Gaps will be kept open, and essentially free of development in order to prevent coalescence of settlements, and to protect their rural setting. It goes on to say that minor development proposals may be permitted if they do no harm, individually or collectively, the purposes of a Local Green Gap or to its open character. Furthermore, paragraphs 6.9 and 6.10 of adopted Policy preamble expand on the purposes of the Local Green Gaps. In particular one of the purposes is to maintain separation between urban areas and free-standing smaller settlements that surround them and by conserving the countryside between residential settlements to preserve the open character of these important breaks between settlements. Draft Policy PPL6 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017 echo the aims of the saved policy stating that the council will not permit any development which would result in the joining of settlements or neighbourhoods, or which would erode their separate identities by virtue of their close proximity. Planning permission may be granted where the development would not compromise the open setting between settlements or neighbourhoods.

The application site is situated in the Stour Valley System Landscape Character Area (LCA) directly adjacent to, and overlooking, The Stour Estuary Marshes LCA as defined and described in the Tendring District Council Landscape Character Assessment. One of the key characteristics of the Stour Valley System is; as defined in the document 'the southern slopes and scenic tributary valleys of the Stour, form a setting to one of the most important wildlife estuaries in Europe and a setting to the Suffolk Coast and Heaths Area of Outstanding Natural Beauty (AONB)'. It is therefore vitally important that planning permission is not granted unless it can be demonstrated that harm will not be caused to the scenic beauty of the area.

The companion document for the above Landscape Character Assessment entitled 'Guidance for the Built Environment' emphasises the importance of protecting the landscape for its value as the rural backdrop and setting for the Suffolk Coast and Heaths AONB. It is important to note that at the present time the application site is adjacent to land that has been proposed, by Natural England, as an extension to the AONB.

The area identified for the construction of the dwellings is a neglected lawn area with established trees and other boundary vegetation. This part of the site can be viewed from New Road to the south and new soft landscaping on this boundary with Mistley Place Park would be required to screen the dwellings from this aspect

In order to show the potential impact of the development proposal on the area the applicant has provided a document entitled 'Desk Review of Landscape and Visual Effects'. This document sets out the baseline qualities of the existing landscape, quantifies the harm likely to result from the development of the land and identifies the extent of mitigation required to remediate harm.

In essence the report acknowledges that there will be a low level of harm but that mitigation, by way of the positioning and design of the dwellings, along with new soft landscaping makes the development acceptable.

Whilst not disputing the findings of the 'Desk Review of Landscape and Visual Effects' it is considered that development in this location would contribute to the gradual erosion of the countryside and the degradation of the Mistley and Manningtree Conservation Area. It is therefore considered that the application would set a precedent for development which would harm the local landscape character.

The character of the site itself would be altered to a more urban form of development than currently exists. For these reasons the character of the proposed development would be at odds with the open quality of the landscape. This has an important role in separating the built up areas of the immediate locality and thereby maintaining their separate character. The proposal would not accord with saved policy EN2 of the adopted Local Plan in terms of the Local Green Gap or with saved policies EN1 and QL9 of the adopted Local Plan which require that the settings and character of settlements are conserved.

For these reasons, the proposal would unacceptably harm the character and appearance of the area. Significant weight must be attributed to this harm due to the location of the site within the open landscape and the strategic value of the Green Gap. In applying the tilted planning balance, the adverse impacts identified would significantly and demonstrably outweigh the benefits of the development including taking into account the extent and validity of the housing shortfall and its effect on the weight to be attached to development plan policies.

- 2 Paragraph 189 of the National Planning Policy Framework ("the Framework") requires applicants to describe the significance of any heritage assets affected. This requirement is retained by draft Policy PPL9 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

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 (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Policy EN17 of the Tendring District Local Plan 2007 and Policy PPL8 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) which states that development within a Conservation Area must preserve or enhance the special character or appearance of the Conservation Area.

The application site lies within Mistley and Manningtree Conservation Area. As a result the Historic Environment Team have been consulted on this application and have stated that Lower Park is noted as a 'positive building' in the conservation area appraisal and as such may be considered a non-designated heritage asset with regard to the NPPF. No Heritage Statement has been provided with the application and as such the application is not considered compliant with paragraph 189 of the NPPF.

The application site is located in an important undeveloped space in the Conservation Area and historically was the parkland associated with Mistley Place. The undeveloped form of this historic parkland forms an important part of the Conservation Area and the open space between Manningtree and Mistley. Much of the area between Manningtree and Mistley was shaped by three generations of the Rigby family as they developed the Mistley Hall Estate in the 18th and early 19th centuries. Many elements of the parkland landscape survive, including Hopping Bridge, the ornamental lake behind it and established tree planting. The historic parkland and its context/character should be safeguarded from inappropriate development to ensure it retains its special interest.

This proposal is not appropriate in principle and will fail to preserve or enhance the character and appearance of conservation area. It is therefore considered that the proposal will cause less than substantial harm to a designated heritage asset and this harm should be considered in the context of the 'great weight' noted in paragraph 193 of the NPPF.

Following the Historic Environment Managers comments, the applicant provided a heritage, landscape, policy supplementary statement. The Historic Environment Team were reconsulted and stated that the comments outlined in the previous response still stand. It is considered that the proposal is inappropriate and fails to preserve or enhance the character and appearance of the Conservation Area. Further to this previous assessment, the following is relevant:

The proposal is located within the historic designed parkland of the now demolished Mistley Place. From the applicant's heritage statement, it is understood that the proposed development is located within the original triangular portion of land owned by the Normans upon which Mistley Place was built, located to the west of the historic road bounding Mistley Hall's parkland at its north and north west extents leading to the Stour. This road subsequently became a HaHa to Mistley Place when this initial parkland was extended following purchases of land to the east of the house. The proposals would therefore be sited within the original 1820 gardens to Mistley Place prior to the 1844 land purchases that expanded this formal parkland to the house eastward. This parkland, combined with the larger Parkland of Mistley Hall Estate has historically constituted a separating buffer between the settlements of Mistley and Manningtree and continues to do so. The proposals would compromise the open character of this parkland which contributes significantly to the Conservation Area and is of special interest.

Consequently, the proposed development fails to accord with paragraph 193 of the National Planning Policy Framework (2019) and the afore-mentioned local and national planning policies.

- 3 Saved Policy EN3 of the Tendring District Local Plan 2007 and Draft Policy PPL2 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) seeks to protect the unique and irreplaceable character of the Essex coastline from inappropriate

forms of development as well as seeking to improve public access to and enjoyment of the coast in accordance with the National Planning Policy Framework.

Although the proposed dwellings are set back from 'The Walls', it is considered that the introduction of two dwellings in this location is an inappropriate form of development which will cause significant harm to the landscape character of the area.

The proposal is therefore contrary to Saved Policy EN3 of the Tendring District Local Plan 2007 and Draft Policy PPL2 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).

- 4 Policy COM6 of the adopted Tendring District Local Plan 2007 states "For residential development below 1.5 hectares in size, developers shall contribute financially to meet the open space requirements of the development in proportion to the number and size of dwellings built".

There is currently a deficit of -3.00 hectares of equipped play/formal open space in Mistley. The closest play area to the development site is located at the Welcome Home Field, 0.5 miles from the proposed development. This play area is classified as Local Equipped Areas but provides limited provision and is in need of improvement to meet the needs of a growing resident population resulting from new development. Due to the significant lack of facilities in the area, a contribution towards play and formal open space, as required through Policy COM6, is justified and relevant to this planning application. The contribution would be used towards upgrading existing equipment at Welcome Home Field, Mistley.

This application is not accompanied by a completed unilateral undertaking to secure the necessary contribution towards play and formal open space facilities and therefore this scheme does not comply with Policy COM6.

- 5 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.

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.

The application scheme proposes a new dwelling on a site that lies within the Zone of Influence (ZoI) being approximately 0.1 km away from Stour and Orwell Estuaries RAMSAR Site and SPA..

New housing development within the ZoI would be likely to increase the number of recreational visitors to Stour and Orwell Estuaries and in combination with other developments it is likely that the proposal would have significant effects on the designated site. Mitigation measures must therefore be secured prior to occupation.

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

The proposal is therefore considered to be contrary to Policies EN6 and EN11a of the Saved Tendring District Local Plan 2007, Policy PPL4 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

## 8. Informatives

### Positive and Proactive Statement

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

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