

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AN	04/05/2020
Planning Development Manager authorisation:	SCE	05/05/2020
Admin checks / despatch completed	CC	05/05/2020
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**Application:** 19/01392/DETAIL                      **Town / Parish:** Ardleigh Parish Council

**Applicant:** Mrs Sarah Cornwell - Bellway Homes (Essex) Ltd

**Address:** Land to The South of Bromley Road Ardleigh

**Development:** Reserved matters for details of appearance, landscaping, layout and scale; and discharge of conditions 3 (landscape specification), 5 (levels), and 6 (lighting) of outline planning permission 17/00859/OUT for the erection of 145 dwellings and associated development.

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

Ardleigh Parish Council      None received

### **2. Consultation Responses**

Essex County Council      No objection subject to securing  
Ecology                      a) a proportionate financial contribution for visitor management measures in line with Essex Coast RAMS.  
   b) ecological mitigation and biodiversity enhancement measures

#### Summary

We have reviewed the Ecological Assessment (SES, September 2019) and Environmental Impact Assessment & Lighting Design Category Selection Process (MMA, September 2019) submitted for the above application. The Ecological Assessment provides an updated assessment of likely impacts on designated sites, protected and Priority species and habitats. These documents are linked to separate discharge of conditions applications for Biodiversity Mitigation, Enhancement and Management and Badgers (both SES, September 2019) under 17/00859/OUT allowed at appeal APP/P1560/W/17/3185776.

We are satisfied that there is sufficient ecological information available for determination. This provides certainty for the LPA of the likely impacts on protected and Priority species & habitats and, with appropriate mitigation measures secured, the development can be made acceptable.

As the development site as falling within the 'Zone of Influence' (ZoI) of Habitats sites scoped into the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS), we note that the applicant has provided information to support HRA to be prepared by the LPA, as the competent authority under the provisions of the Habitats Regulations. This latter document has concluded that, without mitigation, new residential development in this location is likely to have adverse effect on the integrity of one or

more Habitats sites, through increased recreational pressure, either when considered 'alone' or 'in combination' with other plans and projects.

We welcome the application details incorporate the provision of Suitable Alternative Natural Greenspace (SANG) for daily recreational needs to avoid impacts from the development alone. Paragraph 5.16 of the shadow HRA confirms there are a variety of SANG quality walking routes immediately available to new residents. Salary Brook LNR is approximately 60m from the site entrance linked by paved paths. In addition, the route is waymarked, with dog bins throughout. Appendix 3 includes a Colchester Borough Council leaflet promoting Salary Brook and paragraph 5.5 confirms these leaflets will be provided to new residents. Paragraph 5.16 confirms an information board including waymarked routes and websites containing further information (such as 'visit Colchester' etc), and on-site dog bins will also be provided.

We note that in Natural England's consultation response they have no objection in principle and that the applicant has agreed to provide a financial contribution towards visitor management measures at the Habitats sites likely to be affected by recreational pressure. Paragraphs 5.17-18 of the shadow HRA confirm the Essex Coast RAMS financial contribution will be provided. In order to avoid adverse effect on the integrity of coastal Habitats sites from increased recreational disturbance in-combination with other plans and projects, the RAMS contribution will be secured by unilateral undertaking.

The Ecological Assessment has considered the likely impacts on the nearby LoWS (Churn Wood, Churn Wood Meadows and Salary Brook) as well as the irreplaceable Ancient woodland and other Priority habitats within the development site.

We welcome the statement in section 6 of the Environmental Impact Assessment & Lighting Design Category Selection Process (MMA, September 2019):

"The current framework plan provides buffers around the boundaries, with at least a 15m buffer around the ancient woodland edge in eastern and southern extents of the proposed development as well as 20m - 30m buffer along the woodland strip adjacent to the western boundary along Salary Brook. The buffers will be kept dark with a maximum of 1 lux light exposure."

We therefore recommend that a wildlife sensitive lighting scheme is secured for implementation in full as a condition of any consent to avoid impacts on sensitive wildlife.

The mitigation for likely impacts and reasonable biodiversity enhancements will be delivered with implementation of the Biodiversity Mitigation, Enhancement and Management and Badgers (both SES, September 2019) both already submitted for approval under a discharge of condition application 19/01411/DISCON. It is recommended that a copy of the badger licence is provided to the LPA as a condition of any consent.

This provides certainty for the LPA of the likely impacts on protected and Priority species & habitats and demonstrate its compliance with its statutory duties including its biodiversity duty under s40 NERC Act 2006 and s17 Crime & Disorder Act 1998.

Impacts will be minimised such that the proposal is acceptable subject to the conditions below based on BS42020:2013.

Submission for approval and implementation of the details below should be a condition of any planning consent.

Recommended conditions:

#### 1. ACTION REQUIRED IN ACCORDANCE WITH ECOLOGICAL APPRAISAL RECOMMENDATIONS

"All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Ecological Assessment (SES, September 2019), as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

This may include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW,) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details."

Reason: To conserve and enhance Protected and Priority species and allow the LPA to discharge its duties under the UK Habitats Regulations, the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species).

#### 2. PRIOR TO COMMENCEMENT: COPY OF BADGER MITIGATION LICENCE

"The following works to close a badger sett shall not in in any circumstances commence unless the local planning authority has been provided with either:

a licence issued by Natural England pursuant to The Protection of Badgers Act 1992 authorizing the specified activity/development to go ahead; or a statement in writing from the relevant licensing body to the effect that it does not consider that the specified activity/development will require a licence."

Reason: To conserve Protected species and allow the LPA to discharge its duties under the Protection of Badgers Act 1992 and s17 Crime & Disorder Act 1998.

#### 3. PRIOR TO OCCUPATION: WILDLIFE SENSITIVE LIGHTING DESIGN SCHEME

"A lighting design scheme for biodiversity shall be submitted to and approved in writing by the local planning authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate lighting contour plans, Isolux drawings and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats and other sensitive wildlife using their territory.

All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority."

Reason: To allow the LPA to discharge its duties under the UK Habitats Regulations 2017, the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species)

Building Control and  
Access Officer

No comments at this time.

ECC Highways Dept

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

1. Prior to the occupation of any of the proposed development the internal road and footway layout shall be provided in principal with revised drawing numbers :

- o 905-PL-02T Site Layout
- o 905-PL-06L Parking Layout

Reason: To ensure that vehicles using the site access do so in a controlled manner, in the interests of highway safety and in accordance with Policy DM1.

NOTE: Essex Highways have re-iterated that the County will not adopt the loop road featuring Plot 51 in the north, south-eastwards, around to plot 86.

2. Prior to the commencement of development, details of the estate roads and footways (including layout, levels, gradients, surfacing and means of surface water drainage) shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that roads and footways are constructed to an acceptable standard, in the interests of highway safety and in accordance with Policy DM 1 and 6.

3 The development shall not be occupied until such time as a car parking and turning area has been provided in accord with parking layout drawing 905-PL-06L. These facilities shall be retained in this form at all times and shall not be used for any purpose other than the parking and turning of vehicles related to the use of the development thereafter.

Reason: To ensure that on-street parking of vehicles in the adjoining streets does not occur, in the interests of highway safety and in accordance with Policy DM 1 and 8.

4. Each vehicular parking space shall have minimum dimensions of 2.9 metres x 5.5 metres. Each vehicular parking space which is bounded by walls or other construction shall have minimum dimensions of 3.4 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.

5. All single garages should have a minimum internal measurement of 7m x 3m

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.

6. The proposed/any new boundary planting shall be planted a minimum of 1 metre back from the highway boundary and any visibility splay.

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

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

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

8. Prior to the first use of any external lighting / floodlighting within the development site, the light source shall be so positioned and shielded, in perpetuity, to ensure that users of the highway are not affected by dazzle and/or glare, in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that users of the highway are not subjected to glare and dazzle from lighting within the development in the interest of highway safety and in accordance with Policy DM1.

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: As a reminder, the shared private drives should be 5.5m wide for first 6m tapering down to a lesser width.

Informative 2: Any tree planting proposed within the highway must be agreed with the Highway Authority. Trees must be sited clear of all underground services and visibility splays and must be sympathetic to the street lighting scheme. All proposed tree planting must be supported by a commuted sum to cover the cost of future maintenance, to be agreed with the Highway Authority.

Informative 3: Prior to occupation, the development shall be served by a system of operational street lighting of design approved from the Highway Authority along the Primary route, which shall thereafter be maintained in good repair.

Informative 4: The areas directly adjacent to the carriageway(s) in which the trees are to be planted should not be less than 3 metres wide, exclusive of the footway and the trunks of the trees should be no nearer than 2 metres to the channel line of the road. The same dimensions should be used in situations where the footway is located adjacent to the carriageway.

In paved areas, whether or not the planted areas are to be adopted highway, trees should be sited no closer than 2 metres to the defined (or undefined) edge of the carriageway. Where the adopted highway is to be an independent path, trees should be planted no closer than 1 metre from the edge of the highway. In all cases, trees should be provided with root barriers to prevent damage to underground services.

Informative 5: 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.

Essex County Council  
Ecology

Thank you for your email requesting feedback on concerns from the agent for this Reserved Matters application.

Additional comments

Prior to occupation: condition for a Wildlife Sensitive Lighting scheme: ACCEPTED. THIS CAN BE DELIVERED AS A COMPLIANCE CONDITION ACTION REQUIRED.

Having checked the Lighting Environmental Impact Assessment & Lighting Design Category Selection Process (MMA, September 2019), we are satisfied that, despite not having a lux plan to demonstrate that the lighting scheme will avoid spillage on the adjacent woodland and other vegetation that bats use.

Prior to commencement: condition to supply a copy of the Badger mitigation licence: NOT ACCEPTED AND STILL CONSIDERED AS NECESSARY.

We agree that it is not Natural England's role to decide if any protected species mitigation licence is necessary. However the applicant's ecologist have advised that the development will require a badger mitigation licence so this will be a necessary part of ensuring that the development avoids any wildlife crime. It will therefore be essential that a badger licence is approved by Natural England to facilitate commencement of any works in the vicinity of the sett, unless it is inactive when it will not be necessary.

This model condition has been approved by the Planning Inspectorate and promoted to provide certainty to LPAs to ensure that they have done everything in their power to avoid a potential wildlife crime and therefore be compliant with s17 Crime & Disorder Act 1998. Natural England are aware that this model condition is used to ensure a copy of licence is provided for LPAs records.

BSI triggered a review of BS42020:2013 after 5 years although the BSI committee agreed full review would not take place until after Brexit. As part of the review discussions, the Chair of BSI's Technical Committee on Biodiversity held a meeting on 25 September 2018 with Natural England (NE) staff. Discussions on the wording of this condition resulted in NE support for its use, with

advice that LPAs need to follow Standing Advice and Licensing Policies.

We therefore maintain our recommendation to Tendring DC that a copy of the badger licence is submitted to the LPA prior to commencement to demonstrate its duty under s17 Crime and Disorder Act 1998, on the advice of the National Wildlife Crime Unit.

Housing Services	I have no objections to the mix and tenure split for the affordable housing units proposed in the application. I would re-iterate that our preference is that another registered provider is sought to take on these affordable homes.
UU Open Spaces	No comments from Open Spaces. This one is already going to a Management Company.
Anglian Water Services Ltd	The reserved matters application is not foul or surface drainage related, therefore this is outside our jurisdiction for comment.
Building Control and Access Officer	No observations at this time.
Environmental Protection	I have looked at the reports regarding external lighting and have no adverse comment to make. I am happy for condition 6 to be discharged.
Waste Management	Access road to be constructed to suitable standard to withstand weight of 23 tonnes refuse and recycling vehicle, with surface of metalled construction.
Colchester Borough Council	Thank you for consulting CBC on this application, we have no comments to make.
Essex County Council Archaeology	An archaeological evaluation has been completed for application 17/00859/OUT which has not identified the presence of any significant archaeological remains. There is no further recommendations for this application.
Environment Agency	<p>We have inspected the application and have no objection to the plans as proposed.</p> <p>The site is within close proximity to the designated Statutory Main River (Salary Brook) however the plans will not impact on the watercourse. The flood protection is provided by high ground therefore we do not currently carry out routine maintenance at this location.</p>
Essex Wildlife Trust	<p>Thank you for allowing us the opportunity to comment on this application.</p> <p>Essex Wildlife Trust is the county's leading conservation charity, committed to protecting wildlife and inspiring a lifelong love of nature. We manage nature reserves and discovery parks across the county, providing outstanding outdoor education and preserving natural habitats and biodiversity. Founded in 1959 by volunteers, we protect over 8,400 acres of land across 87 sites and are supported by 39,000 members.</p>

Our climate is in crisis and wild species face extinction; the natural world needs us to take action. We believe that the planning system is fundamental to addressing this crisis and securing a healthy natural environment that benefits people and wildlife.

We object to this planning application on the following grounds:

- The developer has not demonstrated that the proposal will deliver a measurable net gain in biodiversity
- The proposal will result in the destruction of a significant area of semi natural, open grassland habitat within a vital wildlife corridor which is of strategic importance at a district level
- The proposal will result in increased fragmentation of semi natural habitats
- The proposal will result in a net loss in biodiversity

### Salary Brook Valley

The Trust considers the protection of the Salary Brook valley habitats, and their ecology and biodiversity, to be of the utmost importance in maintaining levels of biodiversity and key species populations in the wider landscape, from Ardleigh Reservoir in the north to the River Colne in the south.

The functional integrity of the Salary Brook Valley ecosystem is dependent on a coherent, contiguous ecological habitat mosaic along the length of the valley; sensitive receptors such as the Salary Brook itself, the woodlands and ancient hedgerows are linked and buffered by the areas of open grassland and pasture.

### Biodiversity net gain

The Government's 25 Year Environment Plan commits to "put the environment at the heart of planning and development", to create better places for people to live and work and to "embed an environmental net gain principle for development, including housing and infrastructure".

Subsequently, the strengthening of biodiversity net gain policy in the revised National Planning Policy Framework (NPPF) published in July 2018, now requires planning policies and decisions to secure "measurable net gains for biodiversity".

The developer has not provided evidence to demonstrate that the proposal will deliver a measurable net gain in biodiversity. The current proposal presents a significant risk of harm to the functional integrity of the habitat mosaic along the Salary Brook Valley. It fails to provide a holistic approach to protecting and enhancing the biodiversity of the river corridor and as a result it conflicts with national planning policy guidance.

The proposed layout does not make provision for buffer habitat along the northeast boundary due to the position of the interior access road. The lack of sufficient buffer habitat will result in fragmentation and degradation of wildlife corridors, inhibiting movement of wildlife across the landscape. The total loss of semi improved open grassland habitat as a result of the development has not been sufficiently mitigated; the retained habitats will be negatively impacted by increased recreational pressures,



disturbance, noise and light pollution. The overall result will be a significant net loss in biodiversity.

The proposal does not adhere to national planning policy guidelines; it will increase the fragmentation of natural habitats, harm the integrity of a strategically important wildlife corridor and result in an overall net loss of biodiversity.

We respectfully request that permission is refused for this application.

Natural England

Thank you for your consultation on the above dated 27 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.

#### SUMMARY OF NATURAL ENGLAND'S ADVICE

#### NO OBJECTION

Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on designated sites and has no objection.

Natural England's further advice on designated sites/landscapes and advice on other natural environment issues is set out below.

#### European sites

It has been identified that this development site falls within the 'Zone of Influence' (Zoi) of one or more of the European designated sites scoped into the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). In the context of your duty as competent authority under the provisions of the Habitats Regulations, it is therefore anticipated that, without mitigation, new residential development in this location is 'likely to have a significant effect' on one or more European designated sites, through increased recreational pressure, either when considered 'alone' or 'in combination' with other plans and projects.

Based on the plans submitted, Natural England considers that the proposed development will not have likely significant effects on the European designated sites scoped into the Essex Coast RAMS and has no objection to the proposed development.

To meet the requirements of the Habitats Regulations, we advise you to record your decision that a likely significant effect can be ruled out. The following may provide a suitable justification for that decision:

Natural England agrees with the conclusions of the local authority Habitat Regulations Assessment dated 3 October 2019. Through the provision of open space/green infrastructure provision of sufficient quality; and a financial contribution in line with the Essex Coast RAMS, secured by appropriate planning condition or s106 legal agreement, an adverse effect on the integrity' (AEOI) of the

European sites included within the Essex Coast RAMS from increased recreational disturbance can be ruled out

Other advice

Further general advice on the consideration of protected species and other natural environment issues is provided at Annex A.

Natural England have confirmed they are satisfied to return to the original HRA and mitigation as covered by the comments above.

ECC SuDS Consultee	Having reviewed the submitted documents which accompanied the planning application, we do not object to the granting of the planning permission 19/01392/DETAIL. It is in line with the approved outline planning application and as such should be subject to the same conditions applied to the outline application (17/00859/OUT). The proposed development will only meet the requirements of the National Planning Policy Framework if the measures as detailed in the Drainage strategies and the documents submitted with this application are implemented as approved.
NHS East Essex CCG	It appears that there is no change to the numbers of dwellings and if this is correct, our original response against Planning App Ref: 17/00859 would still apply. I don't believe any further comments are required by us, however if you believe this to be any different please advise.
Waste Management	Access road to be constructed to suitable standard to withstand weight of 23 tonnes refuse and recycling vehicle, with surface of metalled construction.

### **3. Planning History**

17/00859/OUT	Erection of up to 145 dwellings, the removal of prefabricated livery stables and the provision of public open space, landscaping and sustainable drainage systems and vehicular access point from Bromley Road. All matters reserved except for means of access.	Refused Allowed at appeal	25.08.2017
19/01197/DISCON	Discharge of condition 12 (archaeology) for application 17/00859/OUT allowed at appeal APP/P1560/W/17/3185776.	Approved	19.09.2019
19/01411/DISCON	Discharge of conditions 4 (Tree Protection), 7 (CMS), 8 (Biodiversity), 10 (Site Access), 11 (off-site highway works), 13 (Drainage) and 14 (Maintenance Plan) for application 17/00859/OUT allowed at appeal APP/P1560/W/17/3185776.	Current Partially discharged	

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

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Tendring District Local Plan 2007

QL1 Spatial Strategy

QL2 Promoting Transport Choice

QL3 Minimising and Managing Flood Risk

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

QL12 Planning Obligations

HG1 Housing Provision

HG3 Residential Development Within Defined Settlements

HG3A Mixed Communities

HG4 Affordable Housing in New Developments

COM6 Provision of Recreational Open Space for New Residential Development

COM29 Utilities

COM31A Sewerage and Sewage Disposal

EN1 Landscape Character

EN6 Biodiversity

EN6A Protected Species

EN6B Habitat Creation

EN11A Protection of International Sites European Sites and RAMSAR Sites

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

EN11C Protection of Local Sites: Local Nature Reserves, County Wildlife Sites, Regionally Important Geological/Geomorphological Sites

EN12 Design and Access Statements

EN13 Sustainable Drainage Systems

EN29 Archaeology

TR1A Development Affecting Highways

TR3A Provision for Walking

TR7 Vehicle Parking at New Development

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

SP1 Presumption in Favour of Sustainable Development

SP2 Spatial Strategy for North Essex

SP3 Meeting Housing Needs

SP4 Providing for Employment & Retail

SP5 Infrastructure & Connectivity

SP6 Place Shaping Principles

SP7 Development and Delivery of New Garden Communities in North Essex

SP8 Tendring/Colchester Borders Garden Community

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

CP3 Improving the Telecommunications Network

### **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)**

Planning History

- In May 2017 an application was made that sought outline planning permission for the erection of up to 145 no. residential units with all matters reserved except for access (17/00859/OUT). The application was refused August 2017 citing the following 5 reasons:

- 1) The location is outside defined settlement boundaries - in both the adopted Local Plan 2007 and the proposed settlement boundary in the emerging Tendring District Local Plan. In addition, the site was within the area of search identified within the emerging Local Plan for the Tendring Colchester Borders Garden Community and would therefore be premature affecting the Council's ability to properly plan for the development of the area. The development of the site would not represent a sustainable form of development, due to its siting and was not considered sustainable economically; socially or environmentally or deliver any public benefit that would warrant approval.
- 2) The effect on the character and appearance of the area, undermining the Council's ability to plan for the Tendring Colchester Borders Garden Community by virtue of the development being within an area identified as a country park to provide a green edge to Colchester.
- 3) Highways - specifically concerns over highway safety, including the proposed access arrangements to the site as well as inadequate information within the Transport Assessment to be able to accurately assess the impact of the development on the highway network.
- 4) Natural Environment - Development would result in harm to the quality and visual quality of the landscape and fails to recognise the importance of the site as part of a green buffer between the Colchester urban fringe and the proposed New Garden Community and in terms of ecology fails to recognise the sensitivity of the site locally due to the surrounding habitats but also the potential adverse impact on protected species here and the European designated protected sites on the Essex Coast.
- 5) Planning Obligations - the lack of a S106 legal agreement to secure necessary planning obligations.

The applicant successfully appealed that decision and in September 2018 a Planning Inspector granted Outline Planning Permission, subject to a S106 legal agreement and fourteen planning conditions.

-19/01411/DISCON was submitted for discharge of conditions relating to the outline permission. Conditions 4 (tree protection), 8 (biodiversity), 10 (site access), 11 (off-site highway works) and 14 (maintenance plan) were discharged on 2nd March 2020. Conditions 7 (construction method statement) and 13 (drainage) remain outstanding awaiting additional information in relation to drainage concerns raised by ECC SuDS.

#### Site Description

- The site comprises 7.33ha of land which extends across two large fields which are separated by a hedge. Previously the fields have been used for the keeping of horses and this activity saw the fields divided into individual paddocks for grazing horses, as well as a number of stable structures which were accessed by an unmade track from Bromley Road which runs to the north of the site.
- The fields occupy rising ground to the east of the Salary Brook, and are enclosed to the south and east by Churn Wood, an extensive block of ancient broadleaved woodland. To the west of Salary Brook is the borough of Colchester and the Longridge Park housing estate.
- The wider surroundings of the site to the east, north and south predominantly comprise fields and woodland. Churn Wood is designated as a Local Wildlife Site ('LWS'), and a small field between it and the brook is separately designated as the Churn Wood Meadow LWS. A considerable length of the valley floor to the south of this is also designated and managed as a Local Nature Reserve.
- There is a significant change in levels across the site, with the overall slope dropping from the east to Salary Brook in the west. The applicant states that the maximum overall difference in height is from 27m AOD north east to approximately 7m AOD in the south west.

#### Proposal

- The application seeks approval for the Reserved Matters, following the grant of Outline Planning Permission and approval of the vehicular access to the site by the Planning Inspector in September 2018.
- The details submitted for approval propose the erection of 145 dwellings along with the provision of Public Open Space and landscaped areas. The main areas of Open Space will be adjoining the brook, which would include an equipped play area. It is proposed that the following mix will be provided - for market sale there will be 37 x 2-bed houses; 31 x 3-bed houses and 34 x 4-bed houses. The Affordable Housing will consist of 6 x 1-bed flats; 4 x 2-bed flats; 24 x 2-bed houses

and 10 x 3-bed houses. The houses will be largely two storeys, but there is one apartment block proposed which will be three storeys in height stepped into the slope.

- The proposal has been subject to numerous amendments particularly relating to the levels across the site. The levels across the scheme have been amended in order to reduce the height of many of the internal retaining walls, this should make the gardens more useable for future occupiers. The reduction in levels has also been extended to the large king post walls at the southern eastern side of the site next to the ancient woodland. The houses in this area have been raised and the walls reduced to improve the relationship to this boundary. To achieve these improvements throughout the scheme the lower slopes have been re-profiled raising the level at the far western edge. The resulting embankments will still be heavily landscaped to create a green slope. Below this slope the longitudinal swales are still retained in conjunction with a flat zone which accommodates the diverted high voltage cables. In addition, the amended plans also propose the relocation of the substation to a position adjacent to the LEAP. The substation needed to be relocated due to technical reasons and it was considered that the new location would have the least impact on the Boulevard tree planting.

### Representations

The Council received letters from 11 residents objecting to the application. A summary of the main issues are listed below:

#### Principle of Development

- The views of local people were ignored when planning permission was granted on appeal against the overwhelming wishes of local residents and two local authorities.
- Development will result in the loss of an area of beauty when brown field sites within the borough are available and could be developed and accessed using existing roads.
- Council Tax - Tendring will collect the council tax while it is Colchester residents who will be adversely affected.
- Proposal is contrary to Colchester's emerging Local Plan which seeks to provide housing in two new Garden Communities and for the Salary Brook Valley to be a natural green space separating the new Wivenhoe development from Colchester.

#### Local Services & Infrastructure

- Medical Services - The Parson's Heath Medical Centre is already over stretched and not taking on new patients. It could not meet the demand created by the residents of the new development. Residents would also increase demand at Colchester General Hospital and dentists in Colchester where services are also over stretched already.
- Education - The closest schools are in Colchester and the increase in demand for places by children living within the proposed development would exacerbate existing problems in local schools.
- The only improved public service provided by the development is a play area.

#### Highways & Transportation

- The increased traffic on local roads will cause greater congestion on an already busy and inadequate road system.
- Stephensons (bus operator) have confirmed that they will not be increasing or enhancing the existing bus service.
- Access - not acceptable that all traffic from the development will have to use the very busy Bromley Road which is clearly not wide enough and is currently subject to a 40mph speed limit.
- The Highway Authority decision to withdraw their objection so close to the appeal meant that residents were unable to respond and the Inspector refused to consider residents' concerns as the Highway Authority raised no objection. Local road users know the road and know there have been many accidents and near misses.
- Proposed access is dangerous - Bromley Road suffers speeding traffic; limited forward visibility; HGV's and buses already have to cross the centre line due to bends; and narrow carriageway width. During the winter road conditions are even more difficult with snow and ice that increases braking distances.
- The construction traffic and activity will potentially increase the risk of accidents

- The access to the site is both on a steep hill and tight bend meaning that there would be limited visibility for vehicles passing the site, where vehicles may be waiting within the highway to turn into the site.
- A roundabout or some form of road widening at the access to this proposed development should be considered.
- The access route to the proposed development passes two schools causing inherent safety risks.

#### Living Conditions

- Heavy plant and HGVs' used during construction will create pollution, unacceptable noise, disturbance and possibly accidents.

#### Landscape

- The site sits within a valley which is regarded as a high-quality green space, functioning as a Green Belt. The area should be turned into a Country Park.
- Workmen have advised that all the current hedgerows including the one on the Tendring side of Salary Brook are to be removed which would be an eco-disaster, further destroying a beautiful valley and ecologically sensitive site.

#### Ecology

- The area contains many diverse habitats - ponds; a brook; flower-rich meadows; wetland and ancient woodlands. Development will either remove habitats and adversely affect the value and integrity of nearby habitats.
- There is an active badger sett on the site. Proposed mitigation is inadequate and housing in such close proximity would adversely affect them.
- Potential impact on the Local Nature Reserve which is located on the Colchester side of Salary Brook.
- Salary Brook Valley is a busy route for swans, duck, geese and other birds flying between Ardleigh reservoir and the River Colne. Development along this valley will be detrimental to their flight between the river and reservoir.
- There should be a 5m wide native species hedge running around the entire site boundary to create / retain a wildlife buffer / corridor as a minimum mitigation for the development of this greenfield site
- Concern that drainage from the site (surface water run-off) could cause environmental damage to Salary Brook, which flows into the local nature reserve and the River Colne.
- It is unclear how the management of habitats within the site for ecological purposes will be funded and monitored in the long term.
- Built development is proposed too close to the Brook corridor, which is an important habitat for aquatic invertebrate, including dragonflies, and water voles and otters; and designated local wildlife sites - Churn Wood and Churn Wood Meadow.
- The loss of semi improved grassland within the site is not being adequately mitigated.

#### Design and Layout

- This is still not a sensible location to build a housing development of this density.
- The site / location is not suitable for blocks of flats.

#### Other Matters

- All the houses will need substantial piling due to the slope of the site. Houses built on the Long Ridge, which was not as steep, required piling between 8/9 meters.

In addition to the letters objecting to the application a further two letters with comments were submitted. The main issues raised were:

- The revisions to the development will cost the developer a lot more than they expected
- Inconsistencies between drawings submitted
- Uncertainty over the proposed boundary fencing
- Concern that the development works could directly or indirectly affect hedges and neighbours property (including a tennis court) on adjoining land.

#### Principle of development



- As set out within the Planning History section above the Council refused the original application in August 2017 for Outline Planning Permission to develop up to 145 dwellings the applicant appealed that decision to the Secretary of State and in September 2018 a Planning Inspector granted Outline Planning Permission, subject to conditions including the approval of the Reserved Matters. When the Inspector allowed the appeal the Inspector also approved the details of the new vehicular access to the site.

- The Council has received a number of objections to this application for approval of the Reserved Matters, however many of the objections do not refer to the Reserved Matters (the Appearance, Landscaping, Layout and Scale of the development) and instead refer to the principle of development - matters such as the suitability of the site for housing development; concerns about the access arrangements and highway safety and capacity; and concerns over infrastructure capacity. As all these matters relate to the principle of development which has been established by the Planning Inspectors decision, the Council are not able to reconsider any of these as part of the determination of this application.

#### Layout

- Policies QL9, QL10 and QL11 of the Saved Local Plan aim to ensure that all new development makes a positive contribution to the quality of the local environment, relates well to its site and surroundings particularly in relation to its form and design and does not have a materially damaging impact on the amenities of occupiers of nearby properties. Policy SPL3 of the Draft Local Plan carries forward the sentiments of these saved policies stating that all new development must make a positive contribution to the quality of the local environment and protect or enhance local character.

- The Inspector when assessing the site acknowledged that it "is of more than ordinary value, and that the adverse effects of development would be greater than those associated with building upon any greenfield site at the urban edge." In addition to landscape sensitivity there are significant changes in levels through the site and it is apparent that the development will rely on retaining structures and changes to levels within the site.

- The applicant has engaged with Officers and the Council's Urban Design Consultant from ECC Urban Design and the site layout has been subject to a number of revisions during the process, including changes to the levels strategy to reduce the number and height of retaining structures. The majority of the site will be two storey development, which is reflective of the character of the area. There is an apartment block which will be three storey but Officers consider this has been appropriately located within the site and that the site levels and surrounding development would result in this block having an acceptable relationship with the rest of the development and the surrounding area. Officers are satisfied that the proposals now before the Council for approval show that the site can accommodate 145 dwellings in a manner which meets the Council's design standards and that the resulting layout and density is appropriate.

#### Impact upon neighbours / Living Conditions

- Policy QL11 of the Saved Local 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'. Whilst Policy SPL3 of the Emerging Local Plan states that 'new development should be compatible with surrounding uses and minimise any adverse environmental impacts - the development will not have a materially damaging impact on the privacy, daylight or other amenities of nearby properties'.

- The site is reasonably well separated from existing dwellings and this will mean that no existing residents will be adversely affected through direct loss of light, privacy or outlook. In addition, conditions attached to the outline permission seek to reduce other potential impacts on properties in the area, requiring approval of external lighting for public areas and a construction method statement to minimise noise, dust and other disruption during the construction period. Residents concerns about noise caused by construction activity are noted. It is inevitable that development of the site for housing will cause noise and some disturbance and as the Planning Inspector granted outline planning permission this cannot be avoided. Condition 7 of the Outline Planning Permission requires the submission and approval of a Construction Management Plan.

- Concerns have been raised by the residents at Hill House Farm about the risk that the proposed ground works could cause ground slippage or movement. A retaining structure is proposed along that boundary. The sections show the neighbours property and existing fence line, a short stretch of land (varying between 2metres/3metres) beyond that remaining at current ground level, and then the land drops down to the proposed road. They express a particular concern about the tennis

court that is constructed on their land, near the site boundary. Although the Council have no reason to believe that problems could be caused the neighbours could contact the developers about their concerns and seek to agree a mechanism to monitor for problems that arise during construction. Alternatively, they may wish to obtain their own specialist advice on the matter as if damage were to be caused then this would be a civil matter. Officers do not consider that it is justified or necessary to apply a planning condition that would require that the developer pay for the neighbours to appoint an independent surveyor as they suggest in their letter.

- The Site Plan identifies the size of the private amenity space to be provided to each plot. Given the topography of the site some of the rear gardens are shown to be terraced with a retaining wall and steps to be provided between levels. The arrangement of private amenity space is considered to be acceptable.

#### Highway Safety

- The Planning Inspector carefully considered the means of access to the site as part of their consideration of the proposed development, including local residents concerns about the safety of the proposed access off Bromley Road, and the danger of collisions between vehicles using Bromley Road and those leaving the site or waiting to turn into it. They were however satisfied that the location of the access, some 25m closer to Colchester than the existing, would be safe and provide road users with the required visibility / sightlines, notwithstanding the width, curved alignment and gradient of Bromley Road. As the access arrangements were approved by the Planning Inspector, they do not form part of the consideration of this application.

- Conditions were also imposed requiring off-site highway works to mitigate the impact that the increased traffic from the development will have on the highway network; improve pedestrian routes and bus stops. The works include the provision of a mini-roundabout to be installed at the junction of Bromley Road and Hawthorn Avenue to allow the junction to function more efficiently and address concerns about congestion resulting from the development. Details of these works have been approved through a separate application to discharge these conditions (19/01411/DISCON).

- Essex County Council - the Highway Authority - have been consulted on the application. Their initial assessment raised a number of issues with the layout and the applicant has subsequently submitted revised plans which have addressed those concerns. The revised plans have shown minor revisions to the internal road layout, including revised turning heads. Having reviewed the revised information Essex County Council have advised that they have no objection to the proposed development, subject to a number of planning conditions.

#### Biodiversity and Green Infrastructure

- The site is a sensitive one in a number of respects and the application is supported by updated Ecology and Arboricultural Reports

- The ecology report provides an updated assessment of likely impacts on designated sites, protected and Priority species and habitats. The surveys and assessments that have been submitted cover badgers, bats, breeding birds, barn owl, kingfisher, Great Crested Newts, hazel dormice, otter, water vole and reptiles. The Council's Ecological consultant has reviewed the submitted information and confirmed that they are satisfied that an adequate ecological assessment has been made of the site and that this has informed a suitable package of mitigation measures to reduce the impact of the development.

- Condition 6 of the outline permission requires details of external lighting for public areas to be submitted at reserved matters stage in order to minimise the impact upon bats. The applicant proposes that buffers around the boundaries are provided, with at least a 15m buffer around the ancient woodland edge in eastern and southern extents of the proposed development as well as 20m - 30m buffer along the woodland strip adjacent to the western boundary along Salary Brook. The buffers will be kept dark with a maximum of 1 lux light exposure. The Council's Ecologist is satisfied with the submitted lighting scheme and recommends a condition to ensure that the approved scheme is complied with.

- At the time that the Outline Planning application was being considered the site was known to contain badger setts and the impact of development on badgers is referred to in objection letters. The applicant's ecologist carried out further survey work during September 2019 and found the main sett to still be active, although the outlier setts were not found to be in use at the time of the surveys. It is proposed that all three setts on the site will be retained in-situ and whilst 20m landscape buffers and exclusion zones are proposed there will be work to install utilities close to the main sett. The applicant's ecology report states that the developer will require a badger

mitigation license that will need to be approved by Natural England before any works are undertaken in the vicinity of the sett. As a temporary measure it is proposed that one-way gates are installed on sett entrances close to where those works will be undertaken to exclude badgers from the area whilst work is undertaken.

- In addition to the updated ecological reports supplied with this application the applicant has already gained approval for ecological mitigation and biodiversity enhancements through a Biodiversity Mitigation, Enhancement and Management and Badgers Report, both approved under 19/01411/DISCON, dealing with condition 8 of the outline permission.

- It is noted that both Colchester Natural History Society and Essex Wildlife Trust have submitted objection letters concerning the application. Some of the issues raised are matters of principle which cannot now be considered after the Planning Inspector granted outline planning permission for the development of the site. Officers did however arrange for the Councils Ecological Consultants to review the objections.

- Having reviewed the letters Place Services are satisfied that subject to the mitigation, enhancement and management details which were approved when Condition 8 of the Outline Planning Permission was discharged by the Council then the development will deliver appropriate biodiversity enhancements.

- Both organisations suggested planting of a section of native species hedge in the north east corner of the site, which they consider to be an important wildlife corridor. Along this boundary a retaining wall (+2.5 metres high) will be constructed. The Council's Ecologist is satisfied that the issue of habitat connectivity has already been addressed in the ecological report and there is no evidence to suggest that this particular location is a key component of a coherent and functioning hedgerow network for any particular wildlife and as such it would not be justified to require further planting in this area.

- One of the most significant features which has influenced the development is Churn Wood, which borders the south and east boundary of the site is designated as Ancient and Semi-Natural Woodland. A 15m exclusion buffer has been applied adjacent to the woodland and anti-personnel fencing is proposed to prevent public access from the development which might adversely harm the value of the woodland.

- The applicants Arboricultural Impact Assessment identifies the removal of two trees (Goat Willow & Field Maple) at the entrance to the site which need to be removed to create the required visibility splays. It is further proposed to remove a poor-quality Blackthorn and Hawthorn hedge which runs through the centre of the site and lengths of the hedge on north east and south west boundary. There is no objection to the proposed removals. It is noted that neighbours are concerned at the potential removal of hedgerows but the developer is only able to remove vegetation within the application site. They have no right to remove hedgerows on the neighbour's land.

- In their decision letter the Inspector identified the importance of new planting to help integrate the development into its surroundings. Following discussions with Officers the quantity and quality of planting has been improved and the Council's Tree Officer is now satisfied with the proposed scheme.

#### Heritage Assets (Listed Buildings)

- Adopted Local Plan Policy EN23: Development within the Proximity of a Listed Building and NPPF Part 16- Conserving and enhancing the historic environment both identify the need to have special regard to the potential to affect the significance of a heritage asset, including any contribution made by their setting.

- There are no designated heritage assets within the site but Hill Farm, whose garden adjoins the site boundary at the top of the hill to the north-east, is considered a non-designated heritage asset which has historic links with the fields of the application site. There is also a group of four former agricultural buildings at Hill Farm which are Grade II Listed buildings. The closest building is approximately 125m to the north-east of the application site. The impact of developing this site for 145 dwellings on heritage assets was considered at the outline stage by the Planning Inspector. He observed that the distance; the presence of existing garden plots and woodland in the intervening area; the fact that current views from the listed buildings already comprise modern built form on the opposite side of the valley were all factors that limited the harm that development of the site would cause to the existing setting of the listed buildings. He did however conclude that the development result in 'very minor harm to their significance' due to the change it would have on their setting. In accordance with Para.138 of the NPPF having concluded that there would be 'less than substantial harm' the Planning Inspector weighed the harm against the public benefits and

stated 'The harm would be very much less than substantial and would be outweighed by the public social and economic benefits of the provision of market and affordable housing, as outlined above'.  
- The proposed layout has a road running along the north-eastern boundary next to a new retaining wall that will be over 2.5m high. This arrangement increases the separation distance of the new dwellings from the boundary and Officers are satisfied that this is an appropriate design response which protects the significance of the neighbouring heritage assets.

#### Surface Water Drainage

- Conditions 13 and 14 of the outline permission relate to the submission of a detailed surface water drainage scheme for the site and the applicant has submitted details to the Council for approval by a separate application to discharge conditions (19/01411/DISCON). Condition 14 (maintenance plan) has been discharged but conditions 7 (Construction Method Statement) and 13 (surface water drainage) are still subject to holding objections from ECC SuDS. Discussions are ongoing on this and it does not affect consideration of the reserved matters proposal. The applicant is confident that there will be no resultant changes required to the layout and has asked for the reserved matters to be determined.  
- ECC SuDS have been consulted on this application for approval of Reserved Matters and they have stated they have no objection, noting that the submitted documents which accompanied this planning application are in line with the approved outline planning application.

#### Planning Obligations

- The outline permission was subject to a S106 legal agreement dated 23rd April 2018 securing 30% affordable housing; £50,301 for healthcare improvements at Parsons Health Medical Centre; provision of a Local Equipped Area of Play (LEAP) within the site; and submission of a Management Plan for the open space. This report only considers the issue of Planning Obligations so far as they are affected by this Reserved Matters application.

#### Affordable Housing

- This Reserved Matters application is consistent with the obligation, providing 30% affordable housing with 65% to be affordable rented and 35% to be intermediate housing. It is proposed that 44 dwellings will be transferred to a Registered Provider. The housing being provided will consist of 6 x 1-bed flats; 4 x 2-bed flats; 24 x 2-bed houses; 10 x 3-bed houses]. 29 of the Affordable Dwellings will be provided on an Affordable Rent basis and 15 as Shared Ownership. The Affordable Housing will be distributed across the site within three groups. The Council's Housing Officer has confirmed that the proposals are acceptable.

#### Public Open Space

- The S106 did not specify a minimum quantum or specific area of Public Open Space provision within the site. It did however require that the Open Space provided include an equipped play area and the layout shows one being provided towards the centre of the site, near to the existing field boundary between the two fields. Following extensive discussions Officers are satisfied with the quantum and arrangement of the Green Spaces proposed. The planning obligation requires that details for the setting out of the POS must be submitted to and approved by the Council.

#### Habitat Regulations Assessment

- This residential development lies within the Zone of Influence for Essex Estuaries SAC, Colne Estuary SPA and Ramsar, Stour and Orwell Estuaries SPA and Ramsar, Dengie SPA and Ramsar, and Blackwater Estuary SPA and Ramsar. Colne Estuary SPA and Ramsar and Essex Estuaries SAC are the closest European sites and are located around 4.5km south of the application site.  
- The outline planning permission granted in September 2018 did not secure a contribution towards RAMS or mitigation to contain recreation within and around the development site and prevent the development contributing to increased recreational activity at the protected sites that would be detrimental to their status.  
- The application was originally submitted with a Shadow HRA which agreed to provide a RAMS contribution, and provided details of on site greenspace and circular walking and cycling routes connecting to Salary Brook and the wider Public Rights of Way network plus provision of information leaflets, signage and dog waste bins. On this basis the Council undertook a HRA dated 3rd October 2019 and Natural England confirmed no objection to this approach.

- The applicant then submitted an amended Shadow HRA confirming that a RAMS contribution is not offered because it is considered that appropriate screening was undertaken by the Planning Inspector in considering and allowing the outline planning permission at appeal and concluding "no significant effects, so that an AA is therefore not required" and "the absence of significant effect means that a contribution either to the [RAMS] Strategy itself or to preparatory surveys would not be justified in this instance."

- Paragraph 58 of the appeal decision confirms that following submission of additional information Natural England confirmed there would be no significant adverse effects on the designated European Sites subject to mitigation measures to be secured by condition. The appeal decision refers to on-site open space provision, in particular dog walking and children's play. The appeal decision also confirms consideration of the People over Wind judgement. The appellants stated the proposal taken either alone or in combination would have no significant effects on the relevant sites, so that Appropriate Assessment is not required. Paragraph 61 of the appeal decision states "I endorse the study's analysis and accept its conclusion of no significant effects, so that an AA is therefore not required. It follows that the measures sought by NE are not necessary as mitigation, and a condition for that reason would not be justified. However, the provision of open space to the extent proposed would be secured by means of the submitted planning obligation. The Recreation Disturbance and Avoidance Strategy envisaged by the ELP is not yet in existence, so that there is no basis to establish the terms of any financial contribution, but in any event the absence of significant effect means that a contribution either to the Strategy itself or to preparatory surveys would not be justified in this instance."

- The applicant provided an amended Shadow HRA (Habitat Regulations Assessment Rev B dated 23rd December 2019). Para 4.6 states "The on-site greenspace provision in the landscape layout (Appendix 1) will need to conform to local planning policy and so does not qualify as mitigation in relation to the Habitats Regulations as set out above in Section 60 of the Appeal Decision. The other factors such as distance to the coast and availability of local recreational greenspace are not within the control of the applicant and hence also not mitigation sensu People over Wind." The applicant therefore argues that there is no requirement for mitigation and the previous SANGS mitigation (i.e. information leaflets, information board and dog bins) has therefore been removed from the Shadow HRA.

- However, a Recreation Plan by SES (Southern Ecological Solutions) dated 16 January 2020 has been provided to confirm how greenspace within and around the site will be used for informal recreation. The Recreation Plan details a number of circular walking and cycling routes which are immediately available by accessing the footpaths west of the site (Figure 2), which connects to Salary Brook Local Nature Reserve (LNR) and the wider public rights of way (PRoW) network which also loop back from Salary Brook past Churn Wood and connects back to site via paved paths on Bromley Road. One of these is 4.6km in length. The Recreation Plan details proposed information leaflets, information board and dog bins which can be secured by condition with provision of the walking route, information board, and dog waste bins prior to first occupation of the development, and retained as approved thereafter. The detail of the information leaflet can be secured by condition and shall be included within the new residents welcome pack to every new dwelling. Conditions can secure the details of these elements and the long-term maintenance and management of the green space.

- On this basis the Council undertook an amended HRA dated 21st January 2020 and reconsulted Natural England.

- On 13th March Natural England confirmed they disagree with the conclusions of the HRA/Appropriate Assessment, and advise that the competent authority is unable to ascertain that the project will not have an adverse effect on European sites. The adoption by the Council of the Essex Coast RAMS strategy provides the most recent framework within which to consider this application, and therefore in their view, the appropriate tariff should be collected. They note that no other form of mitigation is offered by the applicant (because the Inspector considered that there were no impacts to mitigate), and therefore, in their view, likely significant effects remain outstanding.

- The applicant has therefore reverted to their original Shadow HRA and associated mitigation including the RAMS contribution as confirmed in the Council's original HRA dated 3rd October 2019. It is therefore considered that Natural England's comment of no objection of 10th October 2019 is therefore reinstated and the proposal adequately mitigates for the impact upon European sites.

## **6. Recommendation**

## 7. Conditions

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans and documents:
  - 905 PL 01 O Unit Mix
  - 905 PL 02 T Site Layout
  - 905 PL 03 C Site Red Line Layout
  - 905 PL 04 K Storey Heights Layout
  - 905 PL 05 K Refuse Layout
  - 905 PL 06 M Parking Layout
  - 905 PL 07 K Materials Layout
  - 905 PL 09 D Site Location Plan
  - 905 PL 118 B Street Elevations
  - 905 PL 119 B Street Elevations (Sheet 2)
  - 905 PL 120 Apartments Sheet 1
  - 905 PL 121 Apartments Sheet 2
  - 905 PL 122 (CA) Carver Housetype
  - 905 PL 123 B (CH) [Chandler Housetype]
  - 905 PL 124 (HA) [HA71 Housetype]
  - 905 PL 125 B (HA) [HA71 Housetype]
  - 905 PL 126 (HA) [HA83 Housetype]
  - 905 PL 127 B (JE) [Jeweller Housetype]
  - 905 PL 128 B (JE) [Jeweller Housetype]
  - 905 PL 129 B (JE) [Jeweller Housetype]
  - 905 PL 130 (JO) [Joiner Housetype]
  - 905 PL 131 (JO) [Joiner Housetype]
  - 905 PL 132 (MI) [Milliner Housetype]
  - 905 PL 133 B (MI) [Milliner Housetype]
  - 905 PL 134 B (MI) [Milliner Housetype]
  - 905 PL 135 (MI) [Milliner Housetype]
  - 905 PL 136 B (PO) [Potter Housetype]
  - 905 PL 137 B (PO) [Potter Housetype]
  - 905 PL 138 B (QU) [Quilter Housetype]
  - 905 PL 139 B (SC) [Scrivener Housetype Version 1]
  - 905 PL 140 (SC) [Scrivener Housetype Version 2]
  - 905 PL 141 (SI) [Silversmith Housetype]
  - 905 PL 142 B (SI) [Silversmith Housetype]
  - 905 PL 143 B (TH) [Thespian Housetype]
  - 905 PL 144 B (TH) [Thespian Housetype]
  - 905 PL 145 B (TH) [Thespian Housetype]
  - 905 PL 146 B (SG) [Single Garage Sheet 1]
  - 905 PL 147 B (SG) [Single Garage Sheet 2]
  - 905 PL 148 B (DG) [Double Garages Sheet 1]
  - 905 PL 149 B [Double Garages Sheet 2]
  - 905 PL 150 [Double Sales Garage]
  - 905 PL 151 (SS) [Sub Station]
  - 905 PL 152 Proposed Perspectives
  - 905 PL 153 Proposed Perspectives [Sheet 2]
  - 905 SCH 001 Material Schedule
  - PR159-01 Rev Q Landscape Master Plan
  - 19 281 -01-08 MWS Rev C
  - 19 281 01 SK01 and SK02 Visuals Rev B
  - Drawing number JBA 19/281-01 Rev C Detailed Soft Landscape Proposals
  - Drawing number JBA 19/281-02 Rev C Detailed Soft Landscape Proposals
  - Drawing number JBA 19/281-03 Rev C Detailed Soft Landscape Proposals
  - Drawing number JBA 19/281-04 Rev C Detailed Soft Landscape Proposals
  - Drawing number JBA 19/281-05 Rev C Detailed Soft Landscape Proposals
  - Drawing number JBA 19/281-06 Rev C Detailed Soft Landscape Proposals

Design and Access Statement Rev J

1902/07/7000 rev M - External Works Sheet 1 of 2  
1902/07/7001 rev M- External Works Sheet 2 of 2  
1902/07/1002 rev H - Cross Sections Through The Site Sheet 1 of 2  
1902/07/1008 rev B - Cross Sections Through The Site Sheet 2 of 2  
1902/07/1009 - Kings Post  
1902/07/1010 - Kings Post  
1902/07/1011 North East Corner  
Outdoor Lighting Report 21 August 2019  
Connection Schedule 28 August 2019  
Environmental Impact Assessment and Lighting Design Category Selection Process 28 August 2019  
Street Lighting Design MMA 15423/001  
Street Lighting Design MMA 15423/002  
Risk Management Form 28 August 2019  
Shadow Habitats Regulation Assessment September 2019  
Ecological Impact Assessment  
Aboricultural Impact Assessment Rev 6 - 24th January 2020

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

- 2 Notwithstanding the submitted details, no above ground works shall take place until precise details of the provision, siting, design and materials of all walls and fences have been submitted to and approved in writing by the Local Planning Authority. The approved screen walls and fences shall be erected prior to the dwellings to which they relate being occupied and thereafter be retained in the approved form.  
Prior to first occupation of the development the anti-personnel fence shall be erected in accordance with the approved plans to prevent public access from the development site in to Churn Wood. The fence shall thereafter be maintained in accordance with the approved plans.

Reason - In the interests of visual and residential amenity and to ensure the existing woodland is retained and public access restricted to avoid damage from recreational use.

- 3 All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Ecological Assessment (SES, September 2019).

This may include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW,) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.

Reason: To conserve and enhance Protected and Priority species and allow the LPA to discharge its duties under the UK Habitats Regulations, the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species).

- 4 Development shall not commence within badger exclusion areas (i.e. within 20m of a badger sett in current use) as identified within the Ecological Assessment (SES, September 2019) unless or until the Local Planning Authority has been provided with either: a licence issued by Natural England pursuant to The Protection of Badgers Act 1992 authorising the specified activity close to the badger sett / development to go ahead; or a statement in writing from the relevant licensing body to the effect that it does not consider that the specified activity/development will require a licence.

Reason: To conserve Protected species and allow the LPA to discharge its duties under the Protection of Badgers Act 1992 and s17 Crime & Disorder Act 1998.

- 5 The development shall be carried out in accordance with the Lighting Environmental Impact Assessment & Lighting Design Category Selection Process (produced by MMA, dated September 2019). All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.

Reason: To allow the LPA to discharge its duties under the UK Habitats Regulations 2017, the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species).

- 6 Prior to the occupation of each dwelling the internal road and footway serving that dwelling shall be provided in accordance with the approved plans 905-PL-02T Site Layout and 905-PL-06M Parking Layout.

Reason: To ensure acceptable vehicle and pedestrian access to each dwelling.

- 7 Construction of any buildings above ground level shall not be commenced until a schedule of the types and colour of the materials to be used in the external finishes has been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.

Reason: To ensure an appropriate choice of materials having regard to the location of this site in a rural area and to ensure that the choice of materials will harmonise with the character of the surrounding area.

- 8 Any new boundary planting shall be planted a minimum of 1 metre back from the highway boundary and any visibility splay to Bromley Road.

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

- 9 Prior to the development above ground level the details of the number, location and design of a covered parking facility for bicycles for all properties without a garage shall be submitted to and approved in writing by the Local Planning Authority. The approved cycle parking facilities shall be provided prior to occupation of each dwelling that it will serve.

Reason: To ensure appropriate bicycle parking is provided in accordance with the Council's Parking Standards.

- 10 No dwelling shall be occupied until such time as its car parking/garaging and turning area as shown on the approved plan 905-PL-06M has been provided. These facilities shall be retained in this form at all times and shall not be used for any purpose other than the parking and turning of vehicles related to the use of the development thereafter.

Reason: To ensure that on-street parking of vehicles in the adjoining streets does not occur, in the interests of highway safety.

- 11 The garage hereby permitted on Plots 10, 11, 40, 46, 84, 85, 95, 103, 104, 112, 113, 117, 118, 122, 123, and 136 shall only be used for the parking of vehicles or for domestic storage associated with the dwelling and not used for living accommodation.

Reason: To ensure adequate parking and garage space is provided within the site in accordance with the standards adopted by the local planning authority.

- 12 The scheme of landscaping as shown on the Approved Plans, or such other scheme as may be agreed in writing by the local planning authority, shall be carried out during the first planting season after the commencement of the development. Any trees or plants which



die, are removed or become seriously damaged, or diseased within a period of five years from the completion of the development shall be replaced in the next planting season with others of a similar size and species unless the local planning authority gives written consent to any variation.

Reason: To ensure a satisfactory scheme of hard and soft landscaping to enhance the appearance of the development.

- 13 All estate roads where the refuse collection vehicle is required to go shall be constructed to take a load of 23 tonnes.

Reason: To ensure roads are constructed to an acceptable standard and in the interests of highway safety.

- 14 Prior to commencement of any above ground works a scheme for the on-site mitigation of the recreational impact of the development on protected Essex Coast European sites shall have been submitted to and approved in writing by the Local Planning Authority. This mitigation scheme shall comprise;
- a) footpath link to Salary Brook; dog waste bins; information board; and residents' information leaflets as indicated within the Shadow HRA (Habitat Regulations Assessment September 2019);
  - b) full details of the long-term maintenance and management of the green space;
  - c) a program for implementation

Development shall be undertaken in strict accordance with the approved mitigation scheme and program and thereafter managed and retained as approved. Any approved information leaflet shall be included within the new residents welcome pack to every dwelling.

Reason - To encourage the future residents to remain on-site for day to day recreation/dog walking, so as to minimise pressures upon Essex Estuaries SAC, Colne Estuary SPA and Ramsar, Stour and Orwell Estuaries SPA and Ramsar, Dengie SPA and Ramsar, and Blackwater Estuary SPA and Ramsar, pursuant to the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy.

## **8. Informatives**

### **1. Positive and Proactive Statement**

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

#### **Highways Informatives**

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

3. The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.
4. All housing developments in Essex which would result in the creation of a new street (more than five dwelling units communally served by a single all-purpose access) will be subject to the Advance Payments Code, Highways Act, 1980. The Developer will be served with an appropriate notice within 6 weeks of building regulations approval being granted and prior to the commencement of any development must provide guaranteed deposits which will ensure that the new street is constructed in accordance with acceptable specification sufficient to ensure future maintenance as a public highway by the ECC.
5. Prior to occupation, the development shall be served by a system of operational street lighting of design approved from the Highway Authority along the Primary route, which shall thereafter be maintained in good repair.
6. Any tree planting proposed within the highway must be agreed with the Highway Authority. Trees must be sited clear of all underground services and visibility splays and must be sympathetic to the street lighting scheme. All proposed tree planting must be supported by a commuted sum to cover the cost of future maintenance, to be agreed with the Highway Authority.
7. The applicant is advised that the shared private drives should be 5.5m wide for the first 6m tapering down to a lesser width and that Essex Highways will not adopt the loop road featuring Plot 51 in the north, south-east around to Plot 80.

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