

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AL	23/06/2021
Planning Development Manager authorisation:	JJ	24/06/2021
Admin checks / despatch completed	DB	24.06.2021
Technician Final Checks/ Scanned / LC Notified / UU Emails:	CC	24.06.2021

**Application:** 21/00601/FUL **Town / Parish:** Brightlingsea Town Council

**Applicant:** Mr Pudney - North Green Homes

**Address:** Land North of Samsons Road Brightlingsea Essex

**Development:** Residential development of 6no. dwellings with access from Samsons Road.

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

Brightlingsea Town  
Council  
13.05.2021

Brightlingsea Town Council would like to draw attention to the comments made under the previous application number 19/00731/FUL, and cannot see any reason to withdraw these comments. Brightlingsea Town Council still feel it is over-development of the site.

### **2. Consultation Responses**

ECC Highways Dept  
24.05.2021

The information that was submitted in association with the application has been fully considered by the Highway Authority. No site visit was undertaken in conjunction with this planning application. The information submitted with the application has been thoroughly assessed and conclusions have been drawn from a desktop study with the observations below based on submitted material, google earth image dated April 2019. It is noted that this application is a variation to the previously granted planning permission (Application: 19/00731/FUL) and will see the size of the dwellings reduced and replaced with six smaller houses. The revised proposal retains adequate parking and turning for each of the dwellings, therefore:

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

1. Prior to occupation of the development, each vehicular access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 90 metres in both directions, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before each vehicle 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 vehicular accesses 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 each vehicular access shall be constructed at right angles to the highway boundary and to the existing carriageway. The width of the access at its junction with the highway shall not be more than 4.5 metres (equivalent to 5 low kerbs), shall be retained at that width for 6 metres within the site and shall be provided with an appropriate dropped kerb vehicular crossing

of the footway/highway verge.

Reason: to ensure that vehicles can enter and leave the highway in a controlled manner in the interest of highway safety in accordance with policy DM1.

3. Prior to occupation of the development a 1.5 metre x 1.5 metre pedestrian visibility splay, as measured from and along the highway boundary, shall be provided on both sides of each vehicular access. Such visibility splays shall be retained free of any obstruction in perpetuity. These visibility splays must not form part of the vehicular surface of the access.

Reason: To provide adequate inter-visibility between the users of the access and pedestrians in the adjoining public highway in the interest of highway safety in accordance with policy DM1

4. 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

5. No unbound materials shall be used in the surface treatment of any of the proposed vehicular accesses throughout.

Reason: To ensure that loose materials are not brought out onto the highway, in the interests of highway safety and in accordance with Policy DM1.

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

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

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

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

8. Any vehicular hardstanding shall have minimum dimensions of 2.9 metres x 5.5 metres for each individual parking space and each tandem vehicular parking space shall have minimum dimensions of 2.9 metres x 11 metres to accommodate two vehicles, retained in perpetuity.

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

9. All single garages should have a minimum internal measurement of 7m x 3m as per drawing nos. 956/2 to 4.

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.

10. Prior to occupation of the proposed dwelling, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport,

approved by Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator free of charge.

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

11. 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.

12. Prior to the first occupation of the dwellings the provision of a maximum 2 metre wide footway on the north side of Samsons Road across the entire site frontage; as per drawing no. 956/01 including the relocation/ replacement electricity poles/ lighting, removal of redundant kerbing and replacement with upstand kerb and footway, relocation/ replacement of any associated drainage works.

Reason: to facilitate access to the local footway and public rights of way network in the interests of accessibility and highway safety in accordance with Policies DM1 and DM11.

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: 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 - Development Management Team  
Ardleigh Depot,  
Harwich Road,  
Ardleigh,  
Colchester, CO7 7LT

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

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.

The Essex Historic Environment Record (HER) shows that the proposed development lies within an area of archaeological interest.

The proposed development lies adjacent to an area identified on the Essex Historic Environment Record as containing evidence for archaeological activity (EHER 2141). The record of cropmarks shows enclosures, pits, field systems and ringditches in the adjacent fields which extend across a large area and suggest possible ritual, settlement and agricultural activity of unknown date. Excavations at the nearby Moverons Pit have revealed significant multi-period archaeological remains including prehistoric ritual activity and Saxon settlement. The potential for archaeological remains within the development site is high and the impact of the development upon them should be assessed with an archaeological field evaluation.

The following recommendations are made in line with the National Planning Policy Framework:

**RECOMMENDATION:** Archaeological trial trenching and excavation

1. No development or preliminary groundworks of any kind shall take place until a programme of archaeological investigation has been secured in accordance with a written scheme of investigation which has been submitted by the applicant, and approved in writing by the local planning authority.
2. No development or preliminary groundworks of any kind shall take place until the completion of the programme of archaeological investigation identified in the WSI defined in 1 above.
3. The applicant will submit to the local planning authority a post excavation assessment (to be submitted within six months of the completion of the fieldwork, unless otherwise agreed in advance with the Planning Authority). This will result in the completion of post excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

Reason for recommendation

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

Further Recommendations:

A professional team of archaeologists should undertake the archaeological work. The archaeological work will comprise initial trial trenching evaluation. 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.

If you have any questions about this advice, please do not hesitate to contact me.

Essex County Council  
Archaeology  
18.05.2021  
**FOLLOW UP  
COMMENTS**

There has been an increasing amount of archaeological investigations going on in the last couple of years in the Brightlingsea area which would have prompted my consideration of the 2021 application, it does lie adjacent to an area of recorded cropmark features and we are discovering that in many cases they are revealing well preserved prehistoric and Roman landscapes. As the HER is updated with new discoveries then our advice may change on the same site over time. That said if works have commenced under the 2019 application which did not have a condition on it then there is no requirement to put a condition on the 2021 application.

### **3. Planning History**

16/30131/PREAPP	6 No. detached 3 bedroom bungalows with garages, off road parking and service road.		30.06.2016
17/30330/PREAPP	Proposed development of 5no. 2-storey dwellings.		09.01.2018
19/00731/FUL	Proposed residential development for 5no. dwellings (C3) with access from Samsons Road.	Approved	05.07.2019

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

National Planning Policy Framework 2019

National Planning Practice Guidance

*Adopted Tendring District Local Plan (2007) (part superseded)*

QL11	Environmental Impacts and Compatibility of Uses (superseded in part)
QL12	Planning Obligations
HG3	Residential Development within Defined Settlements
HG6	Dwelling Size and Type
HG7	Residential Densities
HG9	Private Amenity Space
HG14	Side Isolation
EN6	Biodiversity
EN6a	Protected Species
EN11A	Protection of International Sites European Sites and RAMSAR Sites
EN29	Archaeology
COM6	Provision of Recreational Open Space for New Residential Development

COM19	Contaminated Land
COM31a	Sewerage and Sewerage Disposal
TR1A	Development Affecting Highways
TR7	Vehicle Parking at New Development

*Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) (Section 1 adopted on 26<sup>th</sup> January 2021)*

Relevant Section 1 Policies (adopted)

SP1	Presumption in Favour of Sustainable Development
SP2	Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
SP3	Spatial Strategy for North Essex
SP4	Meeting Housing Needs
SP7	Place Shaping Principles

Relevant Section 2 Policies (emerging)

SPL1	Managing Growth
SPL2	Settlement Development Boundaries
SPL3	Sustainable Design
HP5	Open Space, Sports and Recreational Facilities
LP4	Housing Layout
PPL4	Biodiversity and Geodiversity
PPL5	Water Conservation, Drainage and Sewerage
PPL7	Archaeology
CP1	Sustainable Transport and Accessibility

Local Planning Guidance

Essex Design Guide

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. In this latter regard, as of 26<sup>th</sup> January 2021, 'Section 1' of the emerging Local Plan for Tendring (Tendring District Local Plan 2013-2033 and Beyond Publication Draft) has been adopted and forms part of the 'development plan' for Tendring.

Section 1 of the Local Plan (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) has been examined by an Independent Planning Inspector who issued his final report and recommended 'main modifications' on 10<sup>th</sup> December 2020. The Inspector's report confirms that, subject to making his recommended main modifications (including the removal from the plan of two of the three 'Garden Communities' proposed along the A120 i.e. those to the West of Braintree and on the Colchester/Braintree Border), the plan is legally compliant and sound and can proceed to adoption. Notably, the housing and employment targets in the plan have been confirmed as sound, including the housing requirement of 550 dwellings per annum in Tendring.

The Council has now formally adopt Section 1 of the Local Plan, in its modified state, at the meeting of Full Council on 26<sup>th</sup> January 2021, at which point it became part of the development plan and carries full weight in the determination of planning applications – superseding, in part, some of the more strategic policies in the 2007 adopted plan.

The examination of Section 2 of the Local Plan (which contains more specific policies and proposals for Tendring) will proceed in early 2021 and two Inspectors have been appointed by the Secretary of State to undertake the examination, with the Council preparing and updating its documents ready for the examination. In time, the Section 2 Local Plan (once examined and adopted in its own right) will join the Section 1 Plan as part of the development plan, superseding in full the 2007 adopted plan.

Where emerging policies are particularly relevant to a planning application and can be given 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 relation to housing supply:

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

With the adoption of the modified Section 1 of the emerging Local Plan, the Councils 'objectively assessed housing need' of 550 dwellings per annum has been found 'sound' and there is no housing shortfall. The Council is able to report a significant surplus of housing land supply over the 5 year requirement, in the order of 6.5 years.

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

### **Site Description**

The site is located to the north of Samsons Road, opposite Maltings Road, to the north west of the settlement of Brightlingsea. This application follows a previous approval for 5 dwellings under planning application reference 19/00731/FUL. The site amounts to approximately 0.26 ha in size and has recently been cleared and groundworks commenced under the previous permission (in accordance with previously approved ecology report and site clearance timing requirements).

The site lies adjacent to a petrol filling station and supermarket to the southeast. Established residential development lies opposite on the southern side of Samson's Road. To the rear of the site is an existing dwelling known as 'Oakwood'. The access to Oakwood runs along the north western boundary of the application and beyond is a recent development of 5 dwellings (reference 17/00288/FUL).

## Description of Proposal

The application seeks full planning permission for the erection of 6 no. 4 bedroom dwellings served by 3 shared access points and driveways, and each with an integral garage to the side and parking / turning area to the front.

## Assessment

The main considerations are:

- Planning History and Principle of Development;
- Layout, Scale and Impact;
- Residential Amenities;
- Highway Safety and Parking;
- Trees and Landscaping;
- Biodiversity and Ecology;
- Environmental Protection;
- Archaeology;
- Financial Contribution - Open Space;
- Financial Contributions - RAMS; and,
- Representations.

## Planning History and Principle of Development

This application follows the previously approved application reference 19/00731/FUL for residential development for 5 no. dwellings 4 bedroom dwellings with detached single garages.

The 'development plan' for Tendring comprises the adopted Tendring District Local Plan 2007 and the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.

Brightlingsea is categorised as a Town within the adopted Local Plan and as a Smaller Urban Settlement within the emerging Local Plan. These settlements provide a range of opportunities for the use of public transport, walking and cycling and because they have established town centres, employment areas and infrastructure, they provide locations where it is possible to deliver sustainable housing grown on a large scale.

The site lies outside of the Brightlingsea Settlement Development Boundary as defined within the adopted Tendring District Local Plan 2007. However, in recognition of the opportunities for growth, the Brightlingsea Settlement Development Boundary has been extended as defined within the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017 now incorporating the application site.

Saved Policy HG3 of the adopted Local Plan deals with residential development within defined settlements stating that, within the defined development boundaries of towns and villages, residential development will be permitted provided it satisfies amenity, design, density, environmental, highway, local housing needs and sustainability criteria, as appropriate, and can take place without material harm to the character of the local area. Emerging Policy SPL2 states that within the Settlement Development Boundaries, there will be a general presumption in favour of new development subject to detailed consideration against other relevant Local plan policies.

As such the principle of siting 6 dwellings on this land is acceptable as the principle of residential development in this location has been established through the previous approval for 5 dwellings and the extension of the settlement development boundary. This is recognised as a sustainable location for housing growth.

The site is also designated as Coastal Protection Belt in the adopted Local Plan, however this designation has been removed in the emerging Local Plan and therefore again confirms the Council's stance to release this land for development purposes.

The detailed considerations relevant to this proposal are set out below.



## Layout, Scale and Impact

Paragraph 117 of the Framework states that planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions

Adopted Policy SP7 of the 2013-33 Local Plan seeks high standards of urban and architectural design which responds positively to local character and context. Emerging Policies SPL3 and LP4 of Section 2 of the 2013-33 Local Plan also require, amongst other things, that developments deliver new dwellings that are designed to high standards and which, together with a well-considered site layout, create a unique sense of place – avoiding the use of ubiquitous standard house types. Paragraph 127 of the Framework requires that developments are visually attractive as a result of good architecture, are sympathetic to local character, and establish or maintain a strong sense of place. Saved Policy HG14 requires a minimum of 1 metre side isolation between dwellings.

As previously approved, the development comprises a row of dwellings in a linear arrangement between the recent development to the north and commercial site to the south. This is an appropriate response to the existing pattern of development and provides the acceptable infill of a piece of land that will be surrounded by development on all sides. The mix of traditional and contemporary designs and finishes is considered to be appropriate and relates acceptably to the mixed character of the locality. The mixture of materials, staggered positioning of the dwellings and subtle design variance between the plots creates a good degree of variety within the development and a harmonious street scene overall.

The layout ensures that the properties maintain sufficient spacing and side isolation. The setback from the highway and parking layout allows for a good level of soft landscaping whilst allowing for private gardens areas to the rear comfortably in excess of the required 100sqm. Each property is shown to have 2 parking spaces according with the requirements of the current parking standards. The site can comfortably deliver 6 dwellings rather than the 5 previously approved in line with the Framework's aim to make effective use of land in meeting the need for homes.

The retention of the vegetation to the northern boundary of the plot provides an appropriate backdrop for the development. The proposal includes a suitably designed soft landscaping scheme including new tree planting to the frontage to offset the loss of vegetation from the creation of new accesses and visibility splays softening views of the development from public vantage points along Samson's Road.

## Residential Amenities

Adopted Policy SP7 of the 2013-33 Local Plan requires that the amenity of existing and future residents is protected. Paragraph 127 f) of the Framework requires that planning decisions should create places with a high standard of amenity for existing and future users. Saved Policy HG9 of the adopted Local Plan sets out the minimum standards for private amenity space. As mentioned above, Saved Policy HG14 requires a minimum of 1 metre side isolation between dwellings.

The development allows for an internal layout and separation distances that would not detract from the amenities of any nearby dwellings or the future occupiers of the proposed dwellings. The staggered positioning of the dwellings is minor and no harmful overshadowing will occur between plots. The dwellings are sited ample distance away from existing neighbouring dwellings with established trees and vegetation. The development will not result in any material loss of sunlight, daylight or outlook or any material loss of privacy or overlooking. Each plot accords with the minimum side isolation standards as set out within Saved Policy HG14, with Plots 1 and 6 exceeding these standards to their outer side boundaries. Each dwelling will be served by a private garden area in excess of the minimum standards set out within Saved Policy HG9.

## Highway Safety and Parking

Paragraph 108 of the National Planning Policy Framework 2019 seeks to ensure that safe and suitable access to a development site can be achieved for all users. The adopted Tendring District

Local Plan (2007) Saved Policy TR1a states that development affecting highways should seek to reduce and prevent hazards and inconvenience to traffic. Emerging Policies SPL3 and CP1 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017 seek to ensure that access to a development site is practicable; that the highway network will be able to safely accommodate the traffic generated; and that the design and layout of the development provides safe and convenient access.

Furthermore, the Essex County Council Parking Standards 2009 set out the parking requirements for new development.

The Essex Parking Standards 2009 require 2 parking spaces per 2+ bedroom dwellings. In this instance, the proposed block plan demonstrates that each property would be served by an appropriate access and visibility splay. Furthermore, each dwelling will be served by a single garage, parking space and turning are thus according with current standards.

Essex County Council raise no objection to the development subject to conditions that will be imposed where necessary. One condition recommends the submission and approval of a Construction Method Statement prior to commencement. This was not a requirement as part of the previous approval and development has commenced. Construction and delivery times are included as part of the Environmental Protection recommendation which will be added as informatives and controlled via the relevant environmental protection legislation if required.

### Trees and Landscaping

Application 19/00731/FUL was accompanied by a tree survey and report in order to show the extent of the constraint that the trees on the land are on the development potential of the land.

The report identified Elm trees and an Elm hedgerow suffering from Dutch Elm Disease; a single Sycamore within the group of Elm and a single Pine tree.

It was concluded that no trees warranted protection and any impact on visual amenity from their loss could be relatively easily replicated by new planting.

The site has been cleared in accordance the previously approved tree report.

As before, it is important to secure the retention of boundary vegetation, to the north, for its screening benefit and to secure new soft landscaping, including tree planting, on the boundary with the highway through the imposition of appropriately worded conditions.

### Biodiversity and Ecology

Application 19/00731/FUL was accompanied by a Preliminary Ecological Appraisal together with the additional survey requirements it identified relating to Bats and Dormouse.

In summary, the Appraisal confirmed that no protected species, or signs of protected species were found on site. Additionally, the proposals would not affect any protected sites within a 2km radius of the site. Recommendations stated that the removal of any trees or hedges required to accommodate the proposed development should be undertaken outside of the breeding bird season.

The Potential Bat Roost Assessment was undertaken by Anglian Ecology in April 2018 and examined the trees, groups of trees and hedgerow scheduled for removal as part of the approved development, and assess their potential suitability as a habitat to support roosting bats. In summary, the trees proposed for removal were assessed as having a low potential to support roosting bat species and therefore bat activity survey(s) were not required to be undertaken on the site.

A Hazel Dormouse Survey was undertaken by Anglian Ecology from April to November 2018 and involved a field survey of the presence/ absence of dormice on the site through nut searches and nest tube surveys. In summary, the associated report confirmed that no common dormice, or any

signs of presence were recorded during the surveys and it is therefore concluded that it is unlikely that a breeding population of common dormice exists within the site.

As mentioned above, the site has been cleared and groundworks commenced under the previous permission. These works were carried out in accordance with the previously approved ecology report and site clearance timing requirements. Having regard to the conditions imposed on approval 19/00731/FUL relating to biodiversity enhancements, officers consider it reasonable to re-impose a condition to secure the bat and bird boxes recommended within the findings of the original ecology appraisals and reports.

### Environmental Protection

Consultation has been undertaken with the Council's Environmental Protection Team due to the proximity of the site to the adjacent petrol filling station. Unfortunately, consultation was not carried out as part of the 2019 application. The consultation has identified an area of potential contamination within 250m of the application site and an unknown infill approximately 50m northwest of the proposed site. In such circumstances, a Phase 1 contaminated land survey would be secured by condition. However, as no such conditions were imposed on the previous permission, this application constitutes a variation to a previous approval and works have commenced, only a watching brief is considered a reasonable request in this instance.

The requirements of the Council's Environmental Protection Team will be included as conditions and informatives as necessary.

### Archaeology

Comments have been received from ECC Archaeology explaining that The Essex Historic Environment Record (HER) shows that the proposed development lies within an area of archaeological interest with recommendations of Archaeological trial trenching and excavation.

However, this is a result of updates to the HER and this was not a consideration or requirement under the previous application.

ECC Archaeology have confirmed that, as works have commenced under the 2019 application which did not have a condition on it then there is no requirement to put a condition on this current application.

### Financial Contribution - Open Space/Play Space

Saved Local Plan Policy COM6 states that for residential development below 1.5 hectares in size where existing open space facilities are inadequate to meet the projected needs of future occupiers, a financial contribution shall be made to the provision of new or improved off-site facilities in scale and kind to meet these needs. These sentiments are carried forward within emerging Policy HP5.

There is currently a deficit of 13.68 hectares of play and formal open space in Brightlingsea. There are two play spaces in Brightlingsea, a Local Area for Play and Skate Park at Promenade Way, Brightlingsea and a Local Equipped Area for Play at Regent Road Recreation Ground, Brightlingsea. Any additional development in the Brightlingsea area will increase demand on already stretched play facilities and formal open space.

As the current play facilities and formal open space are not considered adequate to satisfy any additional need it is felt a contribution towards increasing the play facilities and formal open space is relevant and justified to the planning application. Any contribution would be used to at Western Promenade play area.

A completed unilateral undertaking has been provided to secure this legal obligation.

### Financial Contributions – Recreational Disturbance

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 residential on a site that lies within the Zone of Influence (Zoi) being approximately 1300 metres from Colne Estuary Ramsar and SPA. New housing development within the Zoi would be likely to increase the number of recreational visitors to Colne Estuary 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 completed unilateral undertaking has been provided to secure this legal obligation and to ensure that the development would not adversely affect the integrity of European Designated Sites in accordance with policies EN6 and EN11a of the Saved Tendring District Local Plan 2007, Policy PPL4 and SP2 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.

### Representations

Brightlingsea Town Council would like to draw attention to the comments made under the previous application number 19/00731/FUL, and cannot see any reason to withdraw these comments. Brightlingsea Town Council still feel it is over-development of the site.

Brightlingsea Town Council objected to the previous application on the following grounds (officer response in italics);

- Outside planning envelope  
*The sites lies within the extended settlement development boundary as defined within the emerging Local Plan. There is an extant permission on the site and the principle of development is fully acceptable.*
- Highway safety.  
*The development provides appropriate access arrangements and visibility. The Highway Authority raise no objection to the development.*
- Loss of trees and scrub will make significant visual impact.  
*The loss of trees and shrubs were fully assessed as part of the original approval. It was concluded that no trees on site warranted protection and replacement landscaping could mitigate any impact and sufficiently enhance the development.*
- Overdevelopment.  
*The development fully complies or exceeds policy standards in terms of spacing, parking and garden sizes and cannot be considered overdevelopment of the site.*

No individual letters of representation have been received.

### Conclusion

For the reasons set out above, the proposal is considered to represent a sustainable form of development in a location supported by national and local plan policy that will not result in any material environmental, visual, highway safety or residential harm that warrants refusal of planning permission. The application is accompanied by a completed legal agreement to secure the relevant financial contributions. The application is therefore recommended for approval subject to conditions.

Development has commenced on site under the previous permission. As this is a fresh full application, the standard time limit condition is considered appropriate, for the avoidance of doubt as this current proposal has not commenced.

## 6. Recommendation

Approval - Full

## 7. Conditions

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason - To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans and boundary treatment details:

956/01 Proposed Block Plan and Street Elevation  
956/2 Plots 1 And 2 - Proposed Floor Plans and Elevations  
956/3 Plots 3 And 4 - Proposed Floor Plans and Elevations  
956/4 Plots 5 And 6 - Proposed Floor Plans and Elevations

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

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

Reason - In order to enhance and soften the appearance of the development in the interests of visual amenity and the character of the area.

- 4 All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details shall be carried out during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be agreed in writing by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees in writing to a variation of the previously approved details.

Reason - To ensure the appropriate implementation of the approved landscaping scheme in the interests of visual amenity and the character of the area.

- 5 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.

- 6 Prior to the commencement of any above ground works, precise details of the manufacturer and types and colours of the external facing and roofing materials to be used in the construction of the development hereby permitted shall be submitted to and agreed, in writing, by the Local Planning Authority. Such materials as may be agreed shall be those used in the development.

Reason - Materials are a visually essential requirement to ensure a quality development and insufficient information has been provided within the application.

- 7 Prior to occupation of the development, each vehicular access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 90 metres in both directions, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before each vehicle 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 vehicular accesses and those in the existing public highway in the interest of highway safety.

- 8 Prior to occupation of the development each vehicular access shall be constructed at right angles to the highway boundary and to the existing carriageway. The width of the access at its junction with the highway shall not be more than 4.5 metres (equivalent to 5 low kerbs), shall be retained at that width for 6 metres within the site and shall be provided with an appropriate dropped kerb vehicular crossing of the footway/highway verge.

Reason - To ensure that vehicles can enter and leave the highway in a controlled manner in the interest of highway safety.

- 9 Prior to occupation of the development a 1.5 metre x 1.5 metre pedestrian visibility splay, as measured from and along the highway boundary, shall be provided on both sides of each vehicular access. Such visibility splays shall be retained free of any obstruction in perpetuity. These visibility splays must not form part of the vehicular surface of the access.

Reason - To provide adequate inter-visibility between the users of the access and pedestrians in the adjoining public highway in the interest of highway safety.

- 10 No unbound materials shall be used in the surface treatment of any of the proposed vehicular accesses throughout.

Reason - To ensure that loose materials are not brought out onto the highway, in the interests of highway safety.

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

Reason - To prevent hazards caused by water flowing onto the highway and to avoid the formation of ice on the highway in the interest of highway safety.

- 12 Any vehicular hardstanding shall have minimum dimensions of 2.9 metres x 5.5 metres for each individual parking space and each tandem vehicular parking space shall have minimum dimensions of 2.9 metres x 11 metres to accommodate two vehicles, retained in perpetuity.

Reason - To ensure adequate space for parking off the highway is provided in the interest of highway safety.

- 13 Prior to the first occupation of the dwellings the provision of a maximum 2 metre wide footway on the north side of Samsons Road across the entire site frontage; as per drawing no. 956/01 including the relocation/ replacement electricity poles/ lighting, removal of redundant kerbing and replacement with upstand kerb and footway, relocation/ replacement of any associated drainage works.

Reason - To facilitate access to the local footway and public rights of way network in the interests of accessibility and highway safety.

- 14 The development shall not be occupied until such time as the driveway parking areas and garaging indicated on the approved plans, have been constructed and laid out for parking. The parking and garaging areas shall be retained in this approved form at all times and shall not be used for any purpose other than the parking of vehicles related to the use of the development unless otherwise agreed in writing by the Local Planning Authority.

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

- 15 All new driveways and parking areas shall be made of porous materials, or provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwelling.

Reason - In the interests of sustainable development and to ensure that run-off water is avoided to minimise the risk of surface water flooding.

- 16 Prior to any above ground works, an ecological mitigation and enhancement scheme shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in strict accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

Reason - To preserve and enhance the biodiversity of the site.

- 17 Notwithstanding the provisions of Article 3, Schedule 2 Part 2 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), other than those shown on the approved drawings, no provision of fences, walls or other enclosures shall be erected forward of the front elevations of the dwellings hereby approved except in accordance with details that shall previously be approved in writing by the Local Planning Authority.

Reason - In the interests of visual amenity and landscape impact.

- 18 In the event of unexpected ground conditions being encountered at any time during construction, all site works at the position of the suspected contamination shall stop and the Local Planning Authority and Environmental Health Department notified. The following minimum requirements for dealing with unexpected ground conditions being encountered during construction shall be adhered to throughout and evidence of each stage reported in writing to the Local Planning Authority and Environmental Health Department for approval.

- i. A suitably trained geo-environmental engineer should assess the visual and olfactory observations of the ground and the extent of contamination and the Client and the Local Authority should be informed of the discovery.
- ii. The suspected contaminated material will be investigated and tested appropriately in accordance with assessed risks. The investigation works will be carried out in the presence of a suitably qualified geo-environmental engineer. The investigation works will involve the collection of solid samples for testing and, using visual and olfactory observations of the ground, delineate the area over which contaminated materials are present.
- iii. The unexpected contaminated material will either be left in situ or be stockpiled (except if suspected to be asbestos) whilst testing is carried out and suitable assessments completed to determine whether the material can be re-used on site or requires disposal as appropriate.
- iv. The testing suite will be determined by the independent geo-environmental specialist based on visual and olfactory observations.
- v. Test results will be compared against current assessment criteria suitable for the future use of the area of the site affected.
- vi. Where the material is left in situ awaiting results, it will either be reburied or covered with plastic sheeting.
- vii. Where the potentially contaminated material is to be temporarily stockpiled, it will be placed either on a prepared surface of clay, or on 2000-gauge Visqueen sheeting (or other impermeable surface) and covered to prevent dust and odour emissions.
- viii. Any areas where unexpected visual or olfactory ground contamination is identified will be surveyed and testing results incorporated into a Verification Report.
- ix. A photographic record will be made of relevant observations.

- x. The results of the investigation and testing of any suspect unexpected contamination will be used to determine the relevant actions. After consultation with the Local Authority, materials should either be: o re-used in areas where test results indicate that it meets compliance targets so it can be re-used without treatment; or o treatment of material on site to meet compliance targets so it can be re-used; or o removal from site to a suitably licensed landfill or permitted treatment facility.
- xi. A Verification Report will be produced for the work.

Reason - To protect the health of site workers and end users given the proposal and the development sites proximity to an area of potential contamination within 250m and an unknown infill approximately 50m northwest of the proposed site.

## **8. Informatives**

### 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.

### Legal Agreement Informative - Open Space/Play Space Contribution

This application is the subject of a legal agreement and this decision should only be read in conjunction with this agreement. The agreement addresses the following issues: Public Open Space financial contribution in accordance with Policy COM6 of the adopted Tendring District Local Plan (2007) and Policy HP5 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

### Legal Agreement Informative - Recreational Impact Mitigation

This application is the subject of a legal agreement and this decision should only be read in conjunction with this agreement. The agreement addresses the following issues: mitigation against any recreational impact from residential developments in accordance with Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

### Highways Informatives

1: 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 - Development Management Team  
Ardleigh Depot,  
Harwich Road,  
Ardleigh,  
Colchester, CO7 7LT

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

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

4: Areas within the curtilage of the site for the purpose of the reception and storage of building materials shall be identified clear of the highway to ensure that appropriate loading / unloading facilities are available to ensure that the highway is not obstructed during the construction period in the interest of highway safety.

### Environmental Protection

#### - Noise Control

- 1) The use of barriers to mitigate the impact of noisy operations will be used where possible. This may include the retention of part(s) of the original buildings during the demolition process to act in this capacity.
- 2) No vehicle connected with the works to arrive on site before 07:30 or leave after 19:00(except in the case of emergency). Working hours to be restricted between 08:00 and 18:00 Monday to Saturday (finishing at 13:00 on Saturday) with no working of any kind permitted on Sundays or any Public/Bank Holidays.
- 3) The selection and use of machinery to operate on site, and working practices to be adopted will, as a minimum requirement, be compliant with the standards laid out in British Standard 5228.
- 4) Mobile plant to be resident on site during extended works shall be fitted with non-audible reversing alarms (subject to HSE agreement).
- 5) Prior to the commencement of any piling works which may be necessary, a full method statement shall be agreed in writing with the Planning Authority (in consultation with Pollution and Environmental Control). This will contain a rationale for the piling method chosen and details of the techniques to be employed which minimise noise and vibration to nearby residents.
- 6) If there is a requirement to work outside of the recommended hours the applicant or contractor must submit a request in writing for approval by Pollution and Environmental Control prior to the commencement of works.

#### - Emission Control

- 1) All waste arising from the demolition process, ground clearance and construction processes to be recycled or removed from the site subject to agreement with the Local Planning Authority and other relevant agencies.
- 2) No materials produced as a result of the site development or clearance shall be burned on site.
- 3) All reasonable steps, including damping down site roads, shall be taken to minimise dust and litter emissions from the site whilst works of construction and demolition are in progress.
- 4) All bulk carrying vehicles accessing the site shall be suitably sheeted to prevent nuisance from dust in transit.

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

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