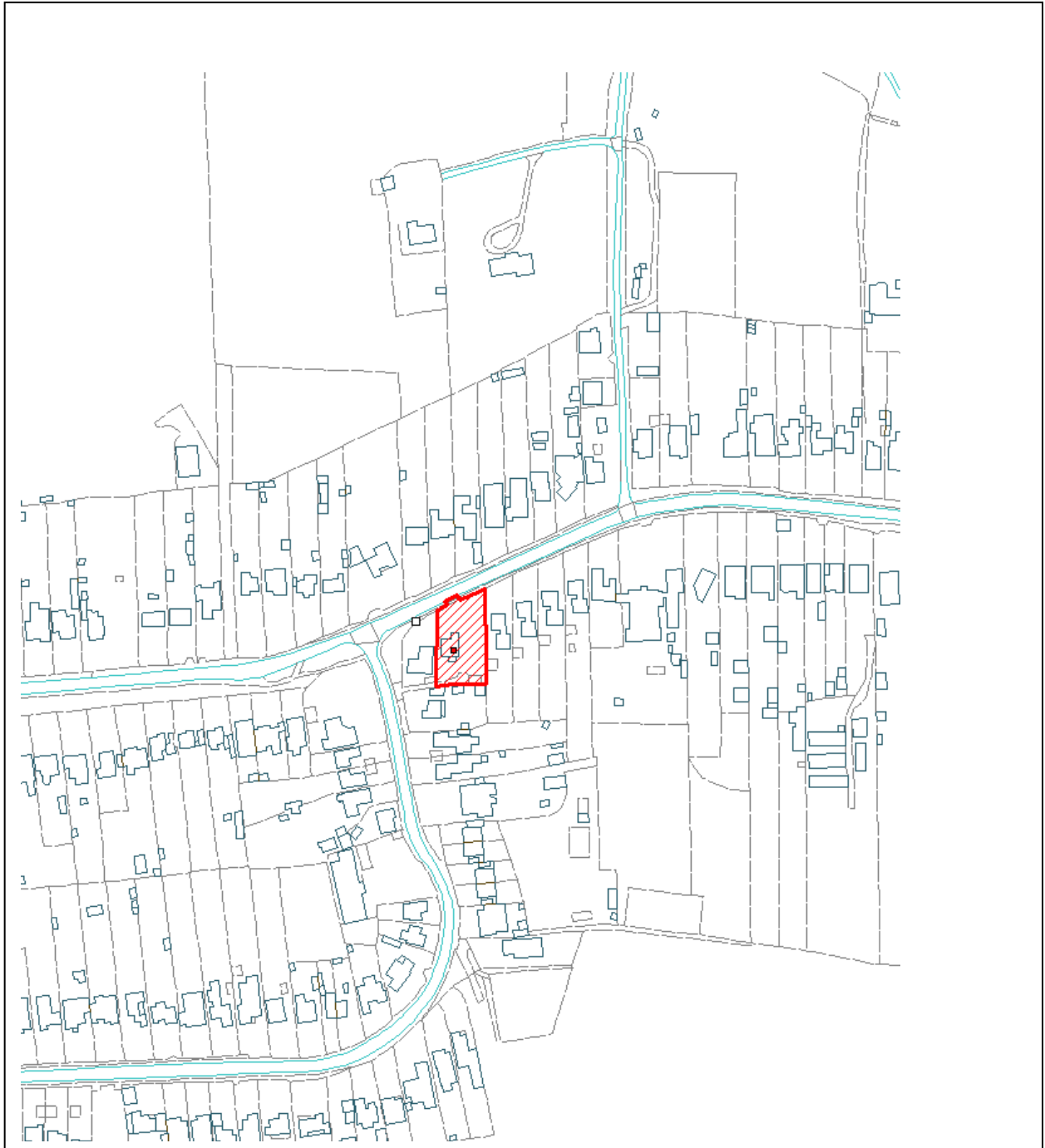


PLANNING COMMITTEE

24th October 2023

REPORT OF THE DIRECTOR OF PLANNING

**A.2 PLANNING APPLICATION – 23/00547/FUL – 225 POINT CLEAR ROAD ST OSYTH CLACTON
ON SEA CO16 8JJ**



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Application:	23/00547/FUL	Original Expiry Date:	22nd June 2023
Case Officer:	Amy Lang	Agreed EOT Date:	27th October 2023
Town/ Parish:	St Osyth Parish Council		
Applicant:	Mr Hoult - B H Property Development Ltd		
Address:	225 Point Clear Road St Osyth Clacton on Sea CO16 8JJ		
Development:	Proposed sub division of site to form building plot and erection of three bedroom detached bungalow including new vehicular access to serve new dwelling and the host property.		

1. Executive Summary

- 1.1 The application is before Members as the proposal represents a departure from the Local Plan, proposing new residential development outside of the St Osyth Settlement Development Boundary (SDB) as defined within the adopted Tendring District Local Plan 2013 to 2033 and Beyond.
- 1.2 The application relates to the side garden of number 225 Point Clear Road, St Osyth. The site is located on the southern side of Point Clear Road, close to the junction with Dumont Avenue and is surrounded by residential development on all sides.
- 1.3 The site lies outside of the defined SDB of St Osyth and there is no defined settlement for Point Clear within the adopted Local plan. The application is therefore contrary to the spatial strategy set out within adopted Local Plan Section 1 Policy SP7 and Section 2 Policy SPL2. However, Local Plan Policy SPL2 does not preclude residential development outside of the defined boundary, but rather requires careful consideration of the scale of development in relation to the settlement hierarchy category, site-specific characteristics, and sustainability of the site.
- 1.4 In this instance, the site-specific merits of the case and a recent appeal decision are of significant weight in the assessment of this application. Namely, the previous outline application for 1 no. dwelling (reference 21/02082/OUT) refused due to the lack of RAMS UU only, and the appeal decision at a nearby site (rear of 172 Point Clear Road appeal reference APP/P1560/W/22/3311836) allowed on the basis that the site is within walking distance of amenities and public transport and the scale of development would be proportionate to the size of this settlement.
- 1.5 Officers are satisfied that existing services and facilities within Point Clear would be capable of supporting the proposed development of 1 dwelling, and that these are accessible within safe walking distance of the site. The proposed single storey dwelling is of a scale and design that will appear as an infill plot, in keeping with the linear pattern and scale of residential development in the locality.
- 1.6 In line with the conclusions of the above-mentioned appeal, other than the high-level policy conflict regarding the location of the site outside the defined settlement development boundary, the development would not result in any material harm in terms of design, impact, residential amenities or highway safety, and is acceptable in all other regards.

Recommendation: Approval subject to Unilateral Undertaking and Conditions, as follows:

That the Head of Planning and Building Control be authorised to grant planning permission subject to:

- 1) The completed Unilateral Undertaking securing;
 - Financial contribution of £156.76 (index linked) towards RAMS.
 - Financial contribution towards the Public Realm (index linked in accordance with the scale of contributions) to upgrade Dumont Avenue Play Area.
- 2) The conditions stated at paragraph 9.2, or varied as is necessary to ensure the wording is enforceable, precise, and reasonable in all other respects, including appropriate updates, so long as the principle of the conditions as referenced is retained; and,
- 3) The informative notes as may be deemed necessary.

2. Planning Policy

2.1 The following Local and National Planning Policies are relevant to this planning application.

National:

National Planning Policy Framework July 2023 (NPPF)
National Planning Practice Guidance (NPPG)

Local:

Tendring District Local Plan 2013-2033 and Beyond North Essex Authorities' Shared Strategic Section 1 Plan (adopted January 2021)

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
SP6	Infrastructure and Connectivity
SP7	Place Shaping Principles

Tendring District Local Plan 2013-2033 and Beyond Section 2 (adopted January 2022)

SPL1	Managing Growth
SPL2	Settlement Development Boundaries
SPL3	Sustainable Design
HP5	Open Space, Sports and Recreation Facilities
LP1	Housing Supply
LP2	Housing Choice
LP3	Housing Density and Standards
LP4	Housing Layout
PPL1	Development and Flood Risk
PPL2	Coastal Protection Belt
PPL3	The Rural Landscape
PPL4	Biodiversity and Geodiversity
PPL5	Water Conservation, Drainage and Sewerage
PPL10	Renewable Energy Generation
CP1	Sustainable Transport and Accessibility
CP2	Improving the Transport Network
DI1	Infrastructure Delivery and Impact Mitigation

Supplementary Planning Documents

Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy SPD 2020 (RAMS)
Provision of Recreational Open Space for New Development May 2008 (under review)

3. The Development Plan

3.1 Status of the Local Plan

Planning law requires that decisions on applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (Section 70(2) of the 1990 Town and Country Planning Act and Section 38(6) of the Planning and Compulsory Purchase Act 2004). This is set out in Paragraph 2 of the National Planning Policy Framework (the Framework). The 'development plan' for Tendring comprises, in part, Sections 1 and 2 of the Tendring District Council 2013-33 and Beyond Local Plan (adopted January 2021 and January 2022, respectively), supported by our suite of evidence base core documents (<https://www.tendringdc.uk/content/evidence-base>) together with any neighbourhood plans that have been brought into force.

In relation to housing supply:

The Framework requires Councils 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 of deliverable housing land against their projected housing requirements (plus an appropriate buffer to ensure choice and competition in the market for land, to account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible or if housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, Paragraph 11 d) of the Framework requires granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole (what is often termed the 'tilted balance').

The Local Plan fixes the Council's housing requirement at 550 dwellings per annum. On 19 October 2021 the Council's Strategic Housing Land Availability Assessment (SHLAA) updated the housing land supply position. The SHLAA demonstrates in excess of a six-and-a-half-year supply of deliverable housing land. On 14 January 2022 the Government published the Housing Delivery Test (HDT) 2021 measurement. Against a requirement for 1420 homes for 2018-2021, the total number of homes delivered was 2345. The Council's HDT 2021 measurement was therefore 165%. As a result, the 'tilted balance' at paragraph 11 d) of the Framework does not apply to applications for housing.

3.2 Neighbourhood Plans

A neighbourhood plan introduced by the Localism Act that can be prepared by the local community and gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan to promote development and uphold the strategic policies as part of the Development Plan alongside the Local Plan. Relevant policies are considered in the assessment. Further information on our Neighbourhood Plans and their progress can be found via our website <https://www.tendringdc.uk/content/neighbourhood-plans>

At the time of writing, there are no adopted or draft neighbourhood plans relevant to this site.

At the present time there are no trees or other significant vegetation on the application site.

The soft landscaping proposed by the applicant shows the planting of 2No. Heavy Standard specimen trees; one either side of the proposed vehicular access. The species and specification for the trees is acceptable and they will be attractive features in their setting.

In terms of the potential impact of the development on the public realm it is considered that the amenity of the locality could be improved by additional planting secured as part of the development of the site. In this regard a new hedgerow should be planted on the garden side of the proposed low boundary wall.

Acceptable species would be:

Laurel - Prunus rotundifolia
Privet – Ligustrum ovalifolium or
Holly – Ilex aquifolium

Plants should be supplied in a container size of at least 3 litres or be 60 - 90cm tall if provided as bare root plants. Many other species would be equally acceptable.

If the tree planting shown on the Block Plan submitted with the application, and the new hedge planting, as described above, were to be secured by a planning condition then it is considered that the proposed development could be satisfactorily assimilated into its setting.

6. Representations

6.1 Parish Council

The Parish Council state in full “St Osyth Parish Council raise no objections with regards to the proposed development itself, but do raise highway concerns as follows:

- Parish strongly object to this application on the grounds of highway safety, especially given the statement from Essex Highways Officer which states that no site visit was undertaken in conjunction with this planning application.
- The creation of two new access and egress points from and onto Point Clear Road is totally unacceptable.
- Traffic is often observed travelling in excess of the posted 30 mph speed limit, and proposed entrance is only 140 metres from the site of a fatal traffic collision, which occurred on 11th August 2019. It should also be noted that the proposed access is 90 metres from the entrance to a residential care home.
- For Essex Highways to approve the proposed access without even attending the site is an absolute disgrace, and the apparent lack of interest puts local residents at risk.”

6.2 Other Representations

No individual letters of representation or objection have been received.

7. Assessment

7.1 The main considerations relevant to the assessment of the application for the proposed development can be summarised as follows:

- Site Context

- Description of Development
- Planning History and Background
- Recent Nearby Appeal Decision
- Principle of Development
- Scale, Layout and Visual Impact
- Trees and Landscaping
- Residential Amenities
- Access, Highway Safety and Parking
- Sustainable Construction & Energy Efficiency Measures
- Drainage and Foul Sewage Disposal
- Planning Obligation – Open Space and Play Space
- Planning Obligation – Recreational Disturbance

Site Context

- 7.2 The application relates to the side garden of number 225 Point Clear Road, St Osyth. The site is located on the southern side of Point Clear Road, close to the junction with Dumont Avenue and is surrounded by residential development on all sides.
- 7.3 The donor property (a chalet bungalow) has been recently renovated and the application site has been physically separated and enclosed by temporary fencing. The remainder of the rear garden serving the host dwelling age by a new 1.8m high close boarded fence.
- 7.4 A prefabricated flat roofed double garage, currently being used for storage purposes, stands at the back of the site which is accessed via a hardened private access way leading off Dumont Avenue.
- 7.5 A short row of two storey dwellings stand to the immediate east of the site, whilst a bungalow stands to the immediate west on the corner of Point Clear Road and Dumont Avenue. A longer line of bungalows stand on the north side of Point Clear Road. The area is predominantly residential in character.
- 7.6 The site lies outside of the defined Settlement Development Boundary of St Osyth. Within the adopted Local Plan, the settlement development for Point Clear has been removed. This is covered in further detail within the assessment below.

Description of Development

- 7.7 The application seeks full planning permission for the sub-division of the site to form a building plot, and the erection of a three bedroomed detached bungalow, including a new, central vehicular access to serve the new dwelling and the host dwelling.
- 7.8 Officers note that, at the time of visiting the site, a new block paved driveway had been laid but a dropped kerb is yet to be installed.
- 7.9 The principal front elevation of the proposed dwelling would be in line with the host dwelling, with a fully hipped front feature extending toward the highway, but no further forward than the neighbouring property at number 217 Point Clear Road.
- 7.10 The site frontage proposes a shared hardstanding and parking area and would retain the existing garage at the rear of the site as an ancillary outbuilding for the proposed dwelling. The front boundary will be enclosed by a 600mm high brick wall to match to the proposed dwelling, with a central break to allow for the access. New tree planting is also proposed to the front of the host dwelling and proposed dwelling.

7.11 The existing private driveway to the rear of the site (off Dumont Avenue) is to be retained for use by the severed host dwelling (not the proposed dwelling).

Relevant Planning History and Background

7.12 In law it is required that decisions are accord with the development plan unless material considerations indicate otherwise. Therefore, the starting position is to understand if this in conflict with the development plan. Policy SPL2 sets out that outside of SDBs the Council will consider any planning application in relation to the pattern and scales of growth promoted through the Settlement Hierarchy in Policy SPL1 and any other relevant policies in this plan. SPL1 lists the settlements but doesn't include this location. It may be possible to compare this built-up area that surrounds this site to a comparable growth centre listed to consider pattern or scale of growth. However, the policy does not provide the provision to encourage or discourage this development should that comparison be made. There are no other policies that are considered to apply in this case to confirm the development is contrary to the development/local plan. The conclusion being this is not a development for which there is a general presumption in favour of new development in terms of the development plan.

7.13 Next, we turn to the material considerations and in this matter, there are two needing to be highlighted. The first being the planning history of the site itself.

7.14 This application follows a previously refused outline application for 1 no. dwelling under reference 21/02082/OUT. The application was submitted in December 2021 and refused planning permission in August 2022 for a single reason – namely due to the lack of a Unilateral Undertaking to secure the required financial contribution in accordance with the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy.

7.15 Application 21/02082/OUT was submitted prior to the full adoption of the new 2013-2033 Local Plan. At the time of submission, Point Clear had a defined settlement development boundary (SDB). The SDB for Point Clear was removed within the new 2013-2033 adopted Local Plan. Consequently, due to the transition period between the previous 2017 Local Plan and the full adoption of the 2013-2033 Local Plan the previous application was refused solely on the absence of a RAMS UU.

7.16 Given the refusal was not on grounds of principle, it should be given due regard and material weight. The site was considered sustainable in accord to the local plan at the time. While the local plan has changed, the underpinning principles of sustainable development have not and material considerations of the position also outlined by the NPPF remain constant. However, it is not given full weight as it was a refusal, and the local plan has altered.

7.17 The second consideration is the material consideration of the surrounding area and a particular appeal case as summarised below:

Appeal Ref:	APP/P1560/W/22/3311836
Site:	Land to the Rear of 172 Point Clear Road, St Osyth CO16 8JB
Development:	Erection of a detached bungalow and associated access, parking and passing bay.

7.18 The appeal decision at paragraph 9, recognises that '...Local Plan Policy SP3 refers to existing settlements being the principal focus for additional growth.', and 'Development will be accommodated within, or adjoining, settlements according to their scale, sustainability and existing role within each individual District.'

7.19 Paragraph 10 goes onto explain that 'The Local Plan Settlement Hierarchy report, forming part of the Local Plan's evidence base, identifies Point Clear as falling within the second tier of settlements. Despite its position in the settlement hierarchy, Point Clear is not identified in the

Local Plan as a location for development because of concerns associated with previous levels of growth and traffic.’

7.20 However, the inspector concluded that:

- The site is within walking distance of a local convenience shop and bus stops, providing an alternative mode of travel to a car for future occupiers.
- The erection of a single dwelling at Point Clear would not be of a scale of development that would be disproportionate to the size of this settlement.
- For the reasons given, it is concluded that the proposed development would not cause unacceptable harm to the character and appearance of the surrounding area and, as such, it would not conflict with LP Policies SP3 and SP7.

7.21 This appeal decision holds significant weight in the consideration of this current application given the decision was made recently and with consideration of the current local plan. The Inspector focused on the Section 1 policies of the Local Plan leading to an assessment of planning harm in relation to the character, appearance, scale of development and that no outward growth of the current built up area would result. They also maintained and considered sustainable principles, including transport and accessibility that would not be available in more rural locations. On this basis it is appropriate to consider this material decision and its comparison to this site, adjusting the consideration of weight according in any differences. This planning balance has been considered by your officers and summarised under the Principle of Development below.

Principle of Development

7.22 The previous application on this site (225 Point Clear Road – application ref 21/02082/OUT) was not refused on principle grounds – this planning decision is a relevant material planning consideration insofar as the principle of development is concerned.

7.23 The recent appeal decision at a nearby site (rear of 172 Point Clear Road) was allowed on the basis that the site is within walking distance of amenities and public transport, and the scale of development would be proportionate to the size of this settlement.

7.24 Adopted Tendring District Local Plan 2013-2033 and Beyond Section 1 (TDLPS1) Policy SP1 states that when considering development proposals, the LPA will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework.

7.25 Other than the high-level policy conflict, in regard to the location of the site outside the defined settlement development boundary, the pattern and scale of development proposed is considered compliant with the settlement hierarchy credentials promoted through Section 2 Policy SPL1.

7.26 Officers are satisfied that existing services and facilities within the settlement would be capable of supporting the development of 1 dwelling, and that these are accessible within safe walking distance of the site.

7.27 The development of the site for 1 dwelling would appear as an infill development and would not result in any harm to the street scene or character of the area.

7.28 For these reasons and with consideration of all material considerations (including areas addressed by the assessment below), the proposal is concluded to represent sustainable development. The specific merits of the application and site would not set a harmful precedent for further development outside defined settlement boundary and would not prejudice the overall spatial strategy of the District.

Scale, Layout and Visual Impact

- 7.29 The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. 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.
- 7.30 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. 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.
- 7.31 The proposed single storey dwelling is of a scale and design that will appear as an infill plot, in keeping with the linear pattern and scale of residential development in the locality.
- 7.32 The forward projecting element will extend beyond the front elevation of the host property, but will not extend forward of the neighbouring dwelling, thus creating a staggered built arrangement. A good set back from the road frontage will be retained and existing development either side will provide partial screening on approach to the site.
- 7.33 Sufficient spacing is retained around the host dwelling and proposed dwelling. Overall, the development will appear well-spaced and will blend well into the street scene.
- 7.34 For these reasons, the development will not result in any harm to the character of the area or wider street scene.

Trees and Landscaping

- 7.35 Paragraph 131 of the NPPF sets out the importance of trees and the contribution they make to the character and quality of urban environments. It states that planning policies and decisions should ensure that opportunities are taken to incorporate trees in developments and that existing trees are retained wherever possible.
- 7.36 TDLP2 Policy LP4 relates to housing layout and states; to ensure a positive contribution towards the District's 'sense of place', the design and layout of new residential developments will be expected to incorporate and maximise the use of green infrastructure, verges, trees and other vegetation.
- 7.37 Consultation has been undertaken with the Council's Tree and Landscaping Officer who raises no objections to the application subject to landscaping conditions, as appropriate.
- 7.38 In this instance, the proposed site layout plan shows mainly grassed and block paved areas but does include new tree planting; 1 to the front of the host dwelling and one to the front of the proposed dwelling. The species and specification for the proposed trees is acceptable and they will be attractive features in their setting.
- 7.39 However, in terms of the potential impact of the development on the public realm it is considered that the amenity of the locality could be improved by additional planting secured as part of the development of the site. In this regard, the Council's Tree and Landscaping Officer recommends the inclusion of new hedgerow planting on the garden side of the proposed low boundary wall.
- 7.40 Officers recommend a condition securing a revised, more thorough landscaping scheme to improve the quality of the development and to satisfactorily assimilate the development into its setting.

Residential Amenities

- 7.41 Paragraph 130 (f) of the National Planning Policy Framework (2021) states that planning should always seek to secure a good standard of amenity for all existing and future occupants.
- 7.42 Section 1 Policy SP7 of the 2013-33 Local Plan requires that the amenity of existing and future residents is protected. Section 2 Policy SPL 3 Part C seeks to ensure that development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties. Furthermore, Policy LP4 seeks to ensure that new dwellings are served by a private amenity space of a size and configuration that meets the needs and expectations of residents and which is commensurate to the size of dwelling and the character of the area.
- 7.43 The size of the plot and single storey height of the proposed dwelling allows for a development that will achieve an internal layout and relationship with neighbouring dwellings, and the host dwelling, that would not result in any material harm to residential amenities in terms of loss of light, sunlight, overlooking, privacy or outlook.
- 7.44 Private amenity space of a suitable size to serve both the proposed dwelling and host dwelling will be provided.
- 7.45 There is one existing first floor side facing window within the facing flank of the neighbouring property at no. 217. However, this is positioned alongside the proposed dwelling and will overlook the roof and not allow for any harmful overlooking or loss of privacy.
- 7.46 For these reasons, the proposed development will secure a good standard of amenity for existing and future residents.

Access, Highway Safety and Parking

- 7.47 Paragraph 110 of the National Planning Policy Framework 2021 seeks to ensure that safe and suitable access to a development site can be achieved for all users. Policy SPL3 Part B of Section 2 of the Tendring District Local Plan 2013-2033 and Beyond seeks to ensure that access to a new development site is practicable and the highway network will be able to safely accommodate the additional traffic the proposal will generate and provision is made for adequate vehicle and cycle parking.
- 7.48 The EPOA Parking Standards 2009 require that for dwellings with 2 or more bedrooms, a minimum of 2 parking spaces is required. Parking spaces should measure 5.5 metres by 2.9 metres.
- 7.49 Essex County Council Highways raise no objection to the development, subject to conditions.
- 7.50 Objections have been raised by St Osyth Parish Council based on highway safety, and the Highway Authority failing to conduct a site visit. However, it is not uncommon for the Highway to make a desk-based assessment for developments of this minor scale, particularly where there is an existing access and / or existing development on the site, as is the case here.
- 7.51 The proposed dwelling would be served by a new, shared, central access from Point Clear Road. The spacious frontage allows for a turning area thus ensuring cars will enter and leave the highway in a forward gear. The proposal does not increase the number of accesses onto the highway. The use of the single access by 2 dwellings is considered acceptable and will not result in excessive or harmful traffic movements.
- 7.52 For these reasons, the development is considered acceptable in terms of accessibility and highway safety.

Sustainable Construction & Energy Efficiency Measures

- 7.53 Policy PPL10 of the Local Plan states that 'all development proposals should demonstrate how renewable energy solutions, appropriate to the building(s) site, and location have been included in the scheme and for new buildings, be designed to facilitate the retro-fitting of renewable energy installations'.
- 7.54 The use of electric vehicle charging points, water-butts, recycling facilities and sustainable drainage SuDS to aid the sustainability of the development should be an integral part of the design, for both the existing and proposed dwelling.
- 7.55 Should Members resolve to approve the application, these requirements can be achieved via an appropriately worded condition.

Drainage and Foul Sewage Disposal

- 7.56 Adopted Policy PPL5 of Section 2 of the Adopted Local Plan states that all new development must make adequate provision for drainage and sewerage. Connection to the mains is the preferred but if this is not possible, the next appropriate method as detailed within the drainage hierarchy and building regulations requirements.
- 7.57 The application confirms that the proposed dwelling will be served by a connection to the main sewer system, in accordance with Local Plan Policy PPL5.

Planning Obligation – Open Space and Play Space

- 7.58 TDLP Section 2 Policy HP 5 states that the Council will work with partners and sports providers across the district to maintain, expand and improve the quality and accessibility of public open space, sports and recreational facilities of different types and will aim to achieve and exceed standards set out in the Council's 2017 Open Spaces Strategy or any future update. TDLP Section 2 Policy DI1 states that all new development should be supported by, and have good access to, all necessary infrastructure. Where a development proposal requires additional infrastructure capacity to be deemed acceptable, mitigation measures must be agreed with the Local Planning Authority and the appropriate infrastructure provider. Such measures may include financial contributions towards new or expanded facilities and the maintenance thereof.
- 7.59 Consultation has been undertaken with the Council's Public Realm Team who have identified that the play facilities in Point Clear are limited, with one play area located in Dumont Avenue. This play area needs updating to cope with any further development. A contribution towards play provision is justified and relevant to this application.
- 7.60 The application is accompanied by a completed Unilateral Undertaking to secure the required contribution in accordance with the above policies and regulations.

Planning Obligation – Recreational Disturbance

- 7.61 Under the Habitats Regulations, a development which is likely to have a significant effect or an adverse effect (alone or in combination) on a European designated site must provide mitigation or otherwise must satisfy the tests of demonstrating 'no alternatives' and 'reasons of overriding public interest'. There is no precedent for a residential development meeting those tests, which means that all residential development must provide mitigation. This residential development lies within the Zone of Influence of the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). The residents of new housing are therefore considered likely to regularly visit relevant designated sites for recreation. In order to avoid a likely significant effect in terms of increased recreational disturbance to coastal European designated sites (Habitats sites) mitigation measures will need to be in place prior to occupation.

- 7.62 This residential development lies within the Zone of Influence being is approximately 653 metres from Colne Estuary (Mid-Essex Coast Phase 2) SPA and Ramsar and Essex Estuaries SAC.
- 7.63 In order to ensure that the development would not adversely affect the integrity of Habitats sites in line with TDLP Section 2 Policy PPL4 and Regulation 63 of the Conservation of Habitat and Species Regulations 2017 a proportionate financial contribution in accordance with the emerging Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) is required.
- 7.64 The application is accompanied by a completed Unilateral Undertaking to secure the required contribution in accordance with the above policies and regulations.

8. **Conclusion**

- 8.1 Officers are satisfied that existing services and facilities within Point Clear would be capable of supporting the development of 1 dwelling, and that these are accessible within safe walking distance of the site.
- 8.2 The proposed single storey dwelling is of a scale and design that will appear as an infill plot, in keeping with the linear pattern and scale of residential development in the locality.
- 8.3 Other than the high-level policy conflict in regard to the location of the site outside the defined settlement development boundary, the development would not result in any material harm in terms of design, impact, residential amenities or highway safety, and is acceptable in all other regards. This approach is in-line with the recent appeal decision cited in the report.

9. **Recommendation**

- 9.1 The Planning Committee is recommended to grant planning permission subject to the following conditions, informatives and completed Unilateral Undertaking securing the following planning obligations:

CATEGORY	TERMS
Financial contribution towards Open Space	Contribution toward the upgrade of facilities at Dumont Avenue play area (index linked)
Financial contribution towards RAMS	£156.76 x 1 dwelling (index linked)

9.2 **Conditions and Reasons**

1. **COMPLIANCE: TIME LIMIT**

CONDITION: 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. **COMPLIANCE: APPROVED PLANS AND DOCUMENTS**

CONDITION: The development hereby permitted shall be carried out in accordance with the drawings/documents listed below and/or such other drawings/documents as may be approved by the Local planning authority in writing pursuant to other conditions of this permission or such drawings/documents as may subsequently be approved in writing by the Local planning authority as a non-material amendment following an application in that regard.

- Site Location Plan Scale 1:1250 received 27 April 2023
- Drawing No HPCR-01 received 13 April 2023
- Materials details shown on Drawing No HPCR-01 received 13 April 2023

REASON: For the avoidance of doubt and in the interests of proper phased planning of the development.

3. FURTHER APPROVAL: HARD AND SOFT LANDSCAPING SCHEME

CONDITION: Notwithstanding the landscaping details shown on approved Drawing No HPCR-01, prior to the commencement of any above ground works, a scheme of hard and soft landscaping shall be submitted to and approved, in writing, by the local planning authority. The scheme shall include any proposed changes in ground levels, 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". The proposed new boundary planting shall be planted a minimum of 1 metre back from the highway boundary and any visibility splay and retained free of obstruction above 600mm at all times. In addition to the new tree planting shown, additional planting in the form of new hedgerow planting on the garden side of the proposed low boundary wall should be included.

REASON: In order to enhance the appearance of the development, in the interests of visual amenity and the quality of the development, and in the interests of highway safety.

4. COMPLIANCE WITH DETAILS AND TIMESCALE REQUIRED: LANDSCAPING SCHEME

CONDITION: All changes in ground levels, soft/hard landscaping shown on the approved landscaping details shall be carried out in full 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 approved, in writing, by the local planning authority up to the first use/first occupation of the development. Any trees, hedges, shrubs or turf identified within the approved landscaping details (both proposed planting and existing) which die, are removed, seriously damaged or seriously diseased, within a period of 10 years of being planted, or in the case of existing planting within a period of 5 years from the commencement of development, shall be replaced in the next planting season with others of similar size and same species unless otherwise agreed in writing by the local planning authority.

REASON: To ensure that the approved landscaping scheme is implemented in accordance with the approved scheme and has sufficient time to establish, in the interests of visual amenity and the character and appearance of the area.

5. COMPLIANCE: PERMEABLE SURFACING

CONDITION: All new parking areas and areas of hardstanding 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 within the site area.

REASON: In the interests of sustainable development and to minimise the risk of surface water flooding.

6. COMPLIANCE: CONSTRUCTION MANAGEMENT PLAN

CONDITION: The development hereby approved shall be carried out in accordance with the accompanying Construction Method Statement received 13 April 2023. The said methodology as approved shall be implemented in its entirety and shall operate as approved

at all times during construction, unless otherwise agreed in writing by the local planning authority.

REASON: To minimise detriment to nearby residential and general amenity by controlling the construction process to achieve the approved development. This condition is required to be agreed prior to the commencement of any development as any construction process, including site preparation, by reason of the location and scale of development may result adverse harm on amenity.

7. COMPLIANCE PRIOR TO OCCUPATION: ACCESS WIDTH

CONDITION: Prior to occupation of the development, the 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 5.5 metres, 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 and highway verge.

REASON: to ensure that vehicles can enter and leave the highway in a controlled manner in the interest of highway safety.

8. COMPLIANCE PRIOR TO OCCUPATION: VIS SPLAYS

CONDITION: Prior to occupation of the development, the access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 43 metres in both directions, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the 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 access and those in the existing public highway in the interest of highway safety.

9. FURTHER APPROVAL: RESIDENTIAL TRAVEL PACK PRIOR TO OCCUPATION

CONDITION: Prior to first occupation of the dwelling, a Residential Travel Information Pack (travel pack) shall be provided to each dwelling for use of its first occupiers. The travel pack shall be agreed, in writing, by the local planning authority prior to provision and shall include a minimum of six one day travel vouchers for use with a local transport operator.

REASON: In the interests of reducing the need to travel by car and promoting sustainable development and transport.

NOTE FOR CONDITION: Please contact the Travel Plan Team at ECC Highways via email to Travel.PlanTeam@essex.gov.uk to obtain a Residential Travel Information Pack template and the associated day travel vouchers required.

10. COMPLIANCE: PARKING PROVIDED AND RETAINED

CONDITION: The proposed dwelling shall not be occupied until such time as the vehicle parking area indicated on the approved plans, has been hard surfaced, and sealed. The vehicle parking area shall be retained in this form at all times. The vehicle parking shall not be used for any purpose other than the parking of vehicles that are related to the use of the development.

REASON: To ensure that appropriate parking is provided so that on street parking of vehicles in the adjoining streets does not occur, in the interests of highway safety.

11. FURTHER APPROVAL: MEASURES TO IMPROVE SUSTAINABILITY OF DEVELOPMENT

CONDITION: Prior to the occupation of the dwelling hereby approved, a scheme for the provision and implementation of water, energy and resource efficiency measures for the lifetime of the development shall be submitted to and approved, in writing, by the Local Planning Authority. The scheme shall provide for:-

- An electric car charging point
- A Water-butt
- Compost bin
- Agreement of heating
- Agreement of scheme for waste reduction

The scheme shall be fully implemented prior to the first occupancy of the dwelling hereby approved unless otherwise agreed in writing by the Local Planning Authority. The scheme shall be constructed, and the measures provided and made available for use as may be agreed and thereafter shall be maintained.

REASON: To enhance the sustainability of the development through better use of water, energy and resources reduce harm to the environment and result in wider public benefit in accordance with the NPPF and Local Plan Policy.

12. ACTION REQUIRED IN THE EVENT OF UNEXPECTED GROUND CONDITIONS

CONDITION: The Local Planning Authority shall be contacted in the event of unexpected ground conditions being encountered during construction and the below minimum precautions shall be undertaken immediately.

Minimum requirements for dealing with unexpected ground conditions being encountered during construction.

1. All site works at the position of the suspected contamination will stop and the Local Planning Authority and Environmental Health Department will be notified as a matter of urgency.
2. 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.
3. 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.
4. 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.
5. The testing suite will be determined by the independent geo-environmental specialist based on visual and olfactory observations.
6. Test results will be compared against current assessment criteria suitable for the future use of the area of the site affected.
7. Where the material is left in situ awaiting results, it will either be reburied or covered with plastic sheeting.

8. 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.
9. Any areas where unexpected visual or olfactory ground contamination is identified will be surveyed and testing results incorporated into a Verification Report.
10. A photographic record will be made of relevant observations.
11. The results of the investigation and testing of any suspect unexpected contamination will be used to determine the relevant actions.
12. After consultation with the Local Planning Authority, materials should either be: re-used in areas where test results indicate that it meets compliance targets so it can be re-used without treatment; or treatment of material on site to meet compliance targets so it can be re-used; or removal from site to a suitably licensed landfill or permitted treatment facility.
13. A Verification Report shall be submitted to and approved in writing by the Local Planning Authority before development can proceed.

REASON: It is the responsibility of the developer to ensure the safe development of the site and to carry out any appropriate land contamination investigation and remediation works. The condition is to ensure the risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

13. FURTHER APPROVAL: BIODIVERSITY ENHANCEMENT STRATEGY

CONDITION: Prior to commencement, a Biodiversity Enhancement Strategy for protected and Priority species shall be submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement Strategy shall include the following:

- a. Purpose and conservation objectives for the proposed enhancement measures;
- b. detailed designs or product descriptions to achieve stated objectives;
- c. locations, orientations, and heights of proposed enhancement measures by appropriate maps and plans;
- d. timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
- e. persons responsible for implementing the enhancement measures;
- f. details of initial aftercare and long-term maintenance (where relevant).

The works shall be implemented in accordance with the approved details prior to occupation and shall be retained in that manner thereafter.

REASON: To enhance protected and Priority species & habitats and allow the LPA to discharge its duties under the NPPF 2021 and s40 of the NERC Act 2006 (Priority habitats & species).

9.3 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.

Landscaping Information

Regarding the revised landscaping scheme required by Condition 3 above, acceptable species for the hedgerow planting, in addition to the new tree planting shown on the approved plans, would be:

Laurel - Prunus rotundifolia
Privet – Ligustrum ovalifolium or
Holly – Ilex aquifolium

Plants should be supplied in a container size of at least 3 litres or be 60 - 90cm tall if provided as bare root plants.

Many other species would be equally acceptable, and the revised landscaping scheme will be fully assessed upon the submission of the relevant discharge of condition application.

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

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.

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.

Legal Agreement Informative - RAMS and Open Space

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.
- Public Open Space financial contribution in accordance with Policy HP5 and Policy DI1 of the adopted Tendring District Local Plan 2013-2033 and Beyond.

Please note that any subsequent variation / removal of condition applications (s73 applications) will require a new legal agreement to secure this obligation unless the development has commenced (subject to all necessary condition discharges) and the contribution has already been paid.

10. Additional Considerations

Public Sector Equality Duty (PSED)

- 10.1 In making your decision you must have regard to the PSED under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions to:
- 10.2 A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- 10.3 B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s); and
- 10.4 C. Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.
- 10.5 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, being married or in a civil partnership, race including colour, nationality and ethnic or national origin, religion or belief, sex and sexual orientation.
- 10.6 The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in section 149 and section 149 is only one factor that needs to be considered, and may be balanced against other relevant factors.
- 10.7 It is considered that the recommendation to grant permission in this case would not have a disproportionately adverse impact on a protected characteristic.

Human Rights

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

Finance Implications

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

11. Background Papers

11.1 In making this recommendation, officers have considered all plans, documents, reports and supporting information submitted with the application together with any amended documentation. Additional information considered relevant to the assessment of the application (as referenced within the report) also form background papers. All such information is available to view on the planning file using the application reference number via the Council's Public Access system by following this link <https://idox.tendringdc.gov.uk/online-applications/>.