

PLANNING COMMITTEE

19th March 2025

REPORT OF THE DIRECTOR OF PLANNING

A.3 PLANNING APPLICATION – 24/01910/FUL – REAR OF 140 POINT CLEAR ROAD ST OSYTH ESSEX CO16 8JA



DO NOT SCALE

© Crown Copyright and database right 2025. Ordnance Survey Licence No.100018684.

Application:	24/01910/FUL	Expiry Date:	14th February 2025
Case Officer:	Oliver Ashford	EOT Date:	
Town/ Parish:	St Osyth Parish Council		
Applicant:	Messrs Cook and Wicken		
Address:	Rear of 140 Point Clear Road St Osyth, Essex CO16 8JA		
Development:	Planning Application - Erection of two detached self-build bungalows.		

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 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 with further consideration outlined below.

Recommendation: Approval subject to Conditions, as follows:

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

- 1) The conditions stated at paragraph 10.2, 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,
- 2) The informative notes as may be deemed necessary.

2. 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 Local Plan 2013-33 and Beyond (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 made and the Minerals and Waste Local Plans adopted by Essex County Council.

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 Local Plan 2013-33 and Beyond (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 made and the Minerals and Waste Local Plans adopted by Essex County Council.

In relation to housing supply:

The Framework requires Councils to significantly boost the supply of homes to meet the District's housing need. Paragraph 78 states that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old. The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of 5% to ensure choice and competition in the market for land, unless the Housing Delivery Test (HDT) demonstrates significant under delivery of housing over the previous 3 years - in which case a higher buffer is required.

On 12th December 2024 the Government published the Housing Delivery Test: 2023 measurement. Against a requirement for 1,466 homes for 2020-2023, the total number of homes delivered was 2,343. The Council's HDT 2023 measurement was therefore 160%, and a buffer of 5% is to be used when calculating the Council's five year land supply position.

The Council demonstrates its supply of specific deliverable sites within the Strategic Housing Land Availability Assessment (SHLAA), which is published annually. The most recent SHLAA was published by the Council in July 2024, and demonstrates a 6.26-year supply of deliverable housing sites against the annual requirement of 550 dwellings per annum set out within the adopted Local Plan, plus a 5% buffer. The SHLAA can be viewed on the Council's website: <https://www.tendringdc.gov.uk/content/monitoring-and-shlaa>

As a result, the 'titled balance' at paragraph 11 d) of the Framework does not apply to decisions relating to new housing development.

3. **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>

4. **Planning Policy**

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

National:

National Planning Policy Framework December 2024 (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)
- Essex County Council Car Parking Standards – Design and Good Practice
- Essex Design Guide
- Technical housing standards – nationally described space standard (DCLG March 2015)

Local Planning Guidance

- EPOA Essex County Council Parking Standards 2009

5. Relevant Planning History

98/00516/OUT	Detached Residential Bungalow	Refused 30.06.1998
13/01294/LUEX	The stationing of one mobile home and one touring caravan for occupation and use between 1st April and 30th November in each calendar year together with the ancillary use of the land beyond the mobile home and touring caravan for use as garden and for leisure purposes. – Granted 10.01.2014	
24/01148/FULHH	Householder Planning Application - Single storey flat roof rear extension and single storey flat roof side extension. – Approved 24.09.2024	

6. Consultations

Below is a summary of the comments received from consultees relevant to this application proposal. Where amendments have been made to the application, or additional information has been submitted to address previous issues, only the latest comments are included below.

All consultation responses are available to view, in full (including all recommended conditions and informatives), 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/>.

Environmental Protection

10.01.2025

With reference to the above, please see below for comments from the EP Team:

Construction Method Statement: I can advise the EP Team have reviewed the submitted CMS and have no adverse comments to make.

ECC Highways Dept

22.01.2025

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 and google earth image.

From a highway and transportation perspective the impact of the proposal is acceptable to Highway Authority, subject to the following requirement;

1. Prior to occupation of the proposed development, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack per dwelling, for sustainable transport, approved by Essex County Council.

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 of the Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance.

Informative:

i. 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

Essex County Council Archaeology

16.01.2025

The above application is for the Erection of two detached self-build bungalows.

The development has been identified from the weekly list by the Historic Environment Advisor to Tendring District Council as having archaeological implications.

The area of the proposed development lies along a gravel ridge forming the southern bank of St Osyth Creek. The gravels were laid down by a former course of the Thames and have potential to contain Palaeolithic archaeological remains.

In the surrounding areas aerial photography has recorded cropmark features indicative of prehistoric and later activity, including remains of possible ritual monuments. To the east and south multi-period archaeological remains are suggested through significant complex cropmark features.

There is high potential for archaeological remains to be present within the development area and, given the extent and density of the multi-period cropmark complexes to the south and east of this site, prehistoric ritual and settlement evidence could be present.

An archaeological evaluation is required in order to determine the nature and significance of any archaeological remains within the development area associated with the historic settlement around the heath and possible earlier activity.

NPPF paragraph 218 (Dec 2024) requires developers to record and advance understanding of the significance of any heritage assets to be lost (wholly or in part) in a manner proportionate to their importance and the impact, and to make this evidence (and any archive generated) publicly accessible.

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.

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.

7. Representations

7.1 Parish Council

St Osyth Parish Council make observations on the application as follows:

Notwithstanding the contradiction between Policy LP 7 (Self-build and custom-built homes) which states the Council will also consider, on their merits, proposals for small developments of new Self-Build and Custom-Built Homes on land outside of, but within a reasonable proximity to, settlement development boundaries and Policy LP 8 c (Backland residential development) which states the proposal must avoid "tandem" development using a shared access, the Parish Council objects to the erection of two self-build bungalows, however, given that similar applications have been granted on appeal by the Planning Inspectorate the Parish Council would have no objections to the erection of a single dwelling, especially as access would be via a track offering single vehicle access and egress at any one time.

Officer response: The self-build element of the proposals is considered in further detail below with Planning Inspectorate decisions also highlighted.

7.2 Neighbour / Local Representations

None received.

8. Assessment

8.1 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

- 8.2 The application relates to the rear garden of number 140 Point Clear Road, St Osyth. The site is located on the northern side of Point Clear Road, with Greenland Grove to the west and is surrounded by residential development to the east and west.
- 8.3 The donor property (a chalet bungalow) has been recently renovated and the application site forms a large portion of the rear garden of the host property, this is yet to be subdivided.
- 8.4 A mixture of bungalows and two storey dwellings are located within the vicinity of the site. The area is predominantly residential in character.
- 8.5 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

- 8.6 The application seeks full planning permission for the sub-division of the site to form two building plot, and the erection of two three bedroomed detached bungalows, including two new, vehicular access points onto Greenland Grove to serve both new dwellings.
- 8.7 The principal front elevation of the proposed dwellings would front onto Greenland Grove would be in line with the host dwelling, with a fully hipped front feature extending toward the highway.
- 8.8 Each dwelling would have a detached garage with a hardstanding and parking area. The site frontage proposes a shared hardstanding and parking area. Frontage soft landscaping treatments would be installed and each dwelling would have a private amenity space to the rear in excess of 120sqm.
- 8.9 The existing private road to the west of the site (Greenland Grove) is to be retained for use by the severed host dwellings and sporadic residential properties to the rear. A new passing place will be installed which will improve accessibility along Greenland Grove.

Relevant Planning History and Background

- 8.10 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.
- 8.11 Next, we turn to the material considerations and in this matter, there are neighbouring schemes of most relevance.
- 8.12 A previously refused outline application for 1 no. dwelling under reference 21/02082/OUT at 225 Point Clear Road. 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.
- 8.13 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.
- 8.14 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.
- 8.15 Further a second material considered is the 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. |
- 8.16 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.'
- 8.17 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.'

8.18 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.

8.19 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

8.20 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.

8.21 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.

8.22 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.

8.23 Officers are satisfied that existing services and facilities within the settlement would be capable of supporting the development of 2 dwellings, and that these are accessible within safe walking distance of the site.

8.24 The development of the site for 2 dwellings would appear as an infill development and would not result in any harm to the street scene or character of the area.

8.25 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.

Self-Build

8.26 The application form and planning statement submitted with the application states that the scheme is a self-build scheme. The applicants are party to the Self Build register held by the Council for residential plots in Point Clear and that the applicant's family would also undertake construction works themselves. Paragraph 70b) of the NPPF states that Local Planning Authorities should seek opportunities, through policies and decisions, to support small sites to

come forward for community-led development for housing and self-build and custom-build housing.

- 8.27 Policy LP7 of the Local Plan states that the Council will encourage the provision of opportunities for constructing Self-Build and Custom-Built Homes as part of the mix of housing on large residential developments and the one-for-one replacement of an existing dwelling, of any size, in the countryside outside of settlement development boundaries with a single unit of Self-Build Housing, unless the impacts of development would conflict with other policy requirements in this Local Plan.
- 8.28 As the site is within the defined settlement development boundary and has not been safeguarded for an alternative use, with the applicants registered on the Council's Self-build register with a view to carrying out the scheme themselves, the proposals therefore accord with both National and Local Policy with regards to self-build.

Scale, Layout and Visual Impact

- 8.29 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 135 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.
- 8.30 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.
- 8.31 The proposed single storey dwellings are of a scale and design that will appear as an infill plot, in keeping with the scale of residential dwellings in the locality. The plots are of an appropriate size and scale for their location and sufficient spacing is retained around the host dwelling and proposed dwellings. Overall, the development will appear well-spaced and will blend well into the street scene.
- 8.32 For these reasons, the development will not result in any harm to the character of the area or wider street scene.

Trees and Landscaping

- 8.33 Paragraph 136 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.
- 8.34 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.
- 8.35 In this instance, the proposed site layout plan shows mainly grassed and block paved areas but does include new landscaping to the west. 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

- 8.36 Paragraph 135 (f) of the National Planning Policy Framework (2024) states that planning should always seek to secure a good standard of amenity for all existing and future occupants.
- 8.37 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.
- 8.38 The size of the plot and single storey height of the proposed dwellings 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.
- 8.39 Private amenity space of a suitable size to serve both the proposed dwelling and host dwelling will be provided.
- 8.40 One bathroom window is proposed to face the existing dwelling. However this can be conditioned to be obscure glazed. Officers consider there is sufficient separation between the existing dwelling and the proposed Plot 1 by way of existing windows to avoid any overlooking or any loss of privacy.
- 8.41 For these reasons, the proposed development will secure a good standard of amenity for existing and future residents.

Access, Highway Safety and Parking

- 8.42 Paragraph 115 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.
- 8.43 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.
- 8.44 Essex County Council Highways raise no objection to the development, subject to conditions.
- 8.45 The proposed dwellings would be served by new access points onto Greenland Grove with sufficient visibility splays and widths to accommodate vehicles entering and leaving both dwellings. Greenland Grove is a private road with ECC Highways having limited controls over the highway. Further, a passing bay is shown on the proposed plans which will improve the manoeuvrability along Greenland Grove. For these reasons, the development is considered acceptable in terms of accessibility and highway safety.

Sustainable Construction & Energy Efficiency Measures

- 8.46 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'.

- 8.47 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.
- 8.48 Should Members resolve to approve the application, these requirements can be achieved via an appropriately worded condition.

Drainage and Foul Sewage Disposal

- 8.49 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.
- 8.50 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.

Ecology and Biodiversity

- 8.51 This report addresses the distinct legal requirements, ensuring a comprehensive analysis of the ecology and biodiversity impacts of the proposal in line with regulatory standards.

Habitats, Protected Species and Biodiversity Enhancement

8.52 Ecology and Biodiversity

8.53 General duty on all authorities

- 8.54 The Natural Environment and Rural Communities Act 2006 amended by the Environment Act 2021 provides under Section 40 the general duty to conserve and enhance biodiversity: "For the purposes of this section "the general biodiversity objective" is the conservation and enhancement of biodiversity in England through the exercise of functions in relation to England." Section 40 states authorities must consider what actions they can take to further the general biodiversity objective and determine policies and specific objectives to achieve this goal. The actions mentioned include conserving, restoring, or enhancing populations of particular species and habitats. In conclusion for decision making, it is considered that the Local Planning Authority must be satisfied that the development would conserve and enhance.

- 8.55 This development is subject to the general duty outlined above. An informative has been imposed strongly encouraging the applicant to improve the biodiversity of the application site through appropriate additional planting and wildlife friendly features. Therefore the development on balance, with consideration of the impact of the development and baseline situation on site, is considered likely to conserve and enhance biodiversity interests.

8.56 Biodiversity net gain

- 8.57 Biodiversity net gain (BNG) is an approach that aims to leave the natural environment in a measurably better state than it was beforehand. This excludes applications for Listed Building Consent, Advert Consent, Reserved Matters, Prior Approvals, Lawful Development Certificates, householders, self builds, and other types of application which are below the threshold i.e. does not impact a priority habitat and impacts less than 25 sq.m of habitat, or 5m of linear habitats such as hedgerow). This proposal is for Self-Build and is therefore applicable for Biodiversity Net Gain.

8.58 Protected Species

In accordance with Natural England's standing advice the proposed development site and surrounding habitat have been assessed for potential impacts on protected species. It is considered that the proposal is unlikely to adversely impact upon protected species or habitats.

Planning Obligation – Open Space and Play Space

- 8.59 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. The proposals are for two dwellings and it is not considered reasonable or necessary to request contributions in this instance.

Planning Obligation – Recreational Disturbance

- 8.60 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.
- 8.61 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.
- 8.62 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.
- 8.63 A condition would be placed on any approved application to seek this contribution by way of Unilateral Undertaking.

9. Conclusion

- 9.1 Officers are satisfied that existing services and facilities within Point Clear would be capable of supporting the development of 2 dwellings, and that these are accessible within safe walking distance of the site.
- 9.2 The proposed single storey dwellings are 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.
- 9.3 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.

10. Recommendation

10.1 The Planning Committee is recommended to grant planning permission subject to the following conditions and informatives below.

10.2 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 20 December 2024. 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. FURTHER APPROVAL: ARCHAEOLOGICAL WORKS 1

CONDITION: No development shall take place until a scheme of archaeological evaluation of the site, including timetable, has been submitted to and approved in writing by the Local Planning Authority (including any demolition needing to be carried out as necessary in order to carry out the evaluation). The evaluation shall be carried out in its entirety as may be agreed.

REASON: To safeguard archaeological assets within the approved development boundary from impacts relating to any groundworks associated with the development scheme and to ensure the proper and timely investigation, recording, reporting and presentation of archaeological assets affected by this development. This condition is required to be agreed prior to the commencement of any development to ensure matters of archaeological importance are preserved and secured early to ensure avoidance of damage or loss due to the development and/or its construction. If agreement was sought at any later stage as there is an unacceptable risk of loss and damage to archaeological and historic assets.

8. FURTHER APPROVAL: ARCHAEOLOGICAL WORKS 2

CONDITION: No development shall take place until a written report on the results of the archaeology evaluation of the site has been submitted to the Local Planning Authority and that confirmation by the Local Planning Authority has been provided

that no further investigation work is required in writing.

Should the Local Planning Authority require further investigation and works, no development shall take place on site until the implementation of a full programme of archaeological work has been secured, in accordance with a Written Scheme of Investigation which has been submitted to and approved in writing by the Local Planning Authority.

The scheme of investigation shall include an assessment of significance and research questions; and:

- a. The programme and methodology of site investigation and recording.
- b. The programme for post investigation assessment.
- c. Details of the provision to be made for analysis of the site investigation and recording.
- d. Details of the provision to be made for publication and dissemination of the analysis and records of the site investigation.
- e. Details of the provision to be made for archive deposition of the analysis and records of the site investigation; and
- f. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

The written scheme of investigation shall be carried out in its entirety prior to any other development taking place, or in such other phased arrangement including a phasing plan as may be previously approved in writing by the Local Planning Authority.

REASON: To safeguard archaeological assets within the approved development boundary from impacts relating to any groundworks associated with the development scheme and to ensure the proper and timely investigation, recording, reporting and presentation of archaeological assets affected by this development. This condition is required to be agreed prior to the commencement of any development to ensure features of archaeological importance are identified, preserved and secured to avoid damage or lost resulting from the development and/or its construction. If agreement was sought at any later stage, there is an unacceptable risk of loss and damage to archaeological and historic assets.

9. FURTHER APPROVAL: ARCHAEOLOGICAL WORKS 3

CONDITION: No building shall be occupied until the archaeology evaluation, and if required the Written Scheme of Investigation, have been completed, submitted to and approved, in writing, by the Local Planning Authority. Furthermore, no building shall be occupied until analysis, publication and dissemination of results and archive deposition from the archaeology investigations as agreed under the Written Scheme of Investigation has taken place, unless an alternative agreed timetable or phasing for the provision of results is agreed in writing by the Local Planning Authority.

REASON: To safeguard archaeological assets within the approved development boundary from impacts relating to any groundworks associated with the development scheme and to ensure the proper and timely investigation, recording, reporting and presentation of archaeological assets affected by this development.

10. 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.

11. PRE-COMMENCEMENT CONDITION: MITIGATION TO BE AGREED, RAMS

CONDITION: The hereby approved development shall not be first commenced until detailed proposals addressing the mitigation of the development's impact on protected Essex Habitats Sites have been submitted to and received written approval from the Local Planning Authority. Such proposals must provide and secure mitigation in accordance with the joint Habitats Regulations Assessment Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) or demonstrate mitigation measures of an equivalent effectiveness to the satisfaction of the Local Planning Authority. For any on site mitigation proposals approved, it shall be carried out in full prior to first occupation, and thereafter shall be maintained as approved.

REASON: In order to safeguard protected wildlife species and their habitats in accordance with the NPPF and Habitats Regulations. Failure to achieve satisfactory mitigation would result in harm by new residents due to the development's impact on protected sites meaning the development must mitigate the burden of development regardless of scale of impact.

NOTE/S FOR CONDITION:

This condition establishes the necessity to ensure the implementation of appropriate mitigation measures due to the impact of the approved development. Such mitigation may be required on-site, off-site, or a combination of both.

Typically, a contribution towards visitor management measures at the protected Habitats Site(s) may be the preferred and simplest approach to fulfil the requirements of this condition. To fulfil this requirement, you can contribute funds towards a range of mitigation projects in the protected areas. It is essential to secure this provision through a legal agreement between the District Council, Developer/Applicant, and site owners prior to commencement of development. You are strongly advised to finalise the legal agreement with the District Council before submitting any request to discharge this condition. Failure to conclude the agreement within the discharge of condition application timeframe may lead to the refusal to discharge the condition. Please note if there are other obligations needed for this development, for example to secure monitoring and maintenance of a Biodiversity Net Gain Plan, you may wish to combine these together as one agreement. Furthermore, please also note a legal agreement will include legal fees and may require obligations to secure monitoring and associated fees.

10. SPECIFIC RESTRICTION ON DEVELOPMENT: SELF-BUILD AND CUSTOM-BUILD

CONDITION: The dwelling/s approved by this permission shall be occupied only by persons who have built or commissioned the building of the dwelling/s for their own occupation and use as a self-build project in accordance with the Self-build and Custom Housebuilding Act 2015 for a minimum of 24 hours from first occupation by said persons.

Furthermore, the following scheduled actions shall be undertaken.

- Prior to commencement of the development, details of the (a) individuals, (b) associations of individuals, or (c) persons working with or for individuals or associations of individuals, both building the development and who are to occupy the dwelling/s if different shall be confirmed in writing to the local planning authority. Should there be any changes to these details during construction, these shall be updated in writing to the local planning authority.
- On first occupation details of the first occupier of the dwelling/s shall be confirmed in writing to the local planning authority and subsequently the Local Planning Authority

shall be informed of if and when that occupier changes within the first year of occupation.

REASON: The dwelling/s approved by this permission shall be occupied only by persons who have built or commissioned the building of the dwelling/s for their own occupation and use as a self-build project in accordance with the Self-build and Custom Housebuilding Act 2015 (as amended) and to accord with provisions of the Local Plan and NPPF.

11 PRIOR TO OCCUPATION CONDITION - PASSING BAY CONDITION –

Prior to the first occupation of the hereby approved development the passing bay indicated on Drawing No. CPC-102 Rev A. shall be implemented and completed in its entirety, and hereby retained thereafter .

REASON: In the interest of highway safety

10.3 Informatives

In accordance with the Council’s general duty to conserve and enhance biodiversity, you are strongly encouraged to improve the biodiversity of the application site through appropriate additional planting and wildlife friendly features. Suggested enhancements could include: <https://www.rhs.org.uk/wildlife/in-the-garden/encourage-wildlife-to-your-garden>

11. Additional Considerations

Equality Impact Assessment

- 11.1 In making this recommendation/decision regard must be had to the public sector equality duty (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 that in summary include A) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act; B. Advance equality of opportunity between people who share a protected characteristic* (See Table) and those who do not; C. Foster good relations between people who share a protected characteristic* and those who do not, including tackling prejudice and promoting understanding.
- 11.2 It is vital to note that the PSED and associated legislation are a significant consideration and material planning consideration in the decision-making process. This is applicable to all planning decisions including prior approvals, outline, full, adverts, listed buildings etc. It does not impose an obligation to achieve the outcomes outlined in Section 149. Section 149 represents just one of several factors to be weighed against other pertinent considerations.
- 11.3 In the present context, it has been carefully evaluated that the recommendation articulated in this report and the consequent decision are not expected to disproportionately affect any protected characteristic* adversely. The PSED has been duly considered and given the necessary regard, as expounded below.

Protected Characteristics *	Analysis	Impact
Age	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Disability	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Gender Reassignment	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Marriage or Civil Partnership	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral

Pregnancy and Maternity	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Race (Including colour, nationality and ethnic or national origin)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sexual Orientation	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sex (gender)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Religion or Belief	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral

Human Rights

- 11.4 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.
- 11.5 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).
- 11.6 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

- 11.7 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.
- 11.8 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.

12. Declaration of Interest

Please refer to the minutes of this meeting, which are typically available on the councils website which will be published in due course following conclusion of this meeting.

13. Background Papers

- 13.1 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/>.