



**MINUTES of  
PLANNING AND LICENSING COMMITTEE  
14 SEPTEMBER 2017**

---

**PRESENT**

Chairman	Councillor Mrs P A Channer, CC
Vice-Chairman	Councillor A K M St. Joseph
Councillors	H M Bass, B S Beale MBE, R G Boyce MBE, M F L Durham, CC, A S Fluker, M R Pearlman, S J Savage and Mrs M E Thompson

**432. CHAIRMAN'S NOTICES**

The Chairman drew attention to the list of notices published on the back of the agenda.

**433. APOLOGIES FOR ABSENCE**

There were none.

**434. MINUTES OF THE LAST MEETING**

**RESOLVED** that the Minutes of the meeting of the Committee held on 20 July 2017 be approved and confirmed.

**435. DISCLOSURE OF INTEREST**

Councillor S J Savage disclosed a non-pecuniary interest in Agenda Item 12 - Maldon and Heybridge Central Area Masterplan – Adoption as Supplementary Planning Document as he lived in Chelmer Terrace.

Councillor M F L Durham declared a non-pecuniary interest as a Member of Essex County Council and advised that he therefore had an interest in any item of business pertinent to that Authority.

Councillor A S Fluker declared in the interest of openness and transparency that he was a Maldon Harbour Commissioner and also a trustee of Stow Maries Great War Areodrome both which were mentioned in Agenda Item 7 – Planning Enforcement.

Councillor Mrs P A Channer declared a non-pecuniary interest as a Member of Essex County Council and any items pertinent to that Authority. She also declared an interest as Stow Maries fell within her division.

#### **436. PUBLIC PARTICIPATION**

No requests had been received.

#### **437. ECONOMIC DEVELOPMENT UPDATE**

Councillor Mrs P A Channer declared an interest in this item of business as she sat on the Overview and Scrutiny Committee.

Prior to consideration of this item of business the Chairman introduced Mr David Burrows, newly appointed Economic Development and Partnership Manager.

The Committee received the report of the Chief Executive providing an update on key issues relating to Economic Development. Appendix 1 to the report provided an update on the activities of various Economic Development workstreams.

The Economic Development and Partnership Manager presented the report and provided a number of updates and the following was noted:

- Stow Maries Great War Aerodrome had recently been awarded £4.3 million Lottery funding.
- Sense of Place – Councillor M F L Durham reported on a recent meeting with the Chairman of the Sense of Place Board and that the Council needed to be using the Sense of Place logos across all Council documents including emails and staff identification badges.

A number of questions were raised regarding the Superfast Broadband project and in response the Chief Executive provided Members with an update which had come from David Wilde at the recent Locality Board meeting. It was noted that Phase Three was being implemented. The Chief Executive advised she would seek to obtain information as to where the investment would be made and commented that it was essential to ensure that Essex County Council continued its focus on the Maldon District. It was requested that a report be brought to this Committee and the Finance and Corporate Services Committee on Superfast Broadband, including the monies invested by the Council.

Councillor S J Savage declared a non-pecuniary interest as he was a Maldon Town Councillor and the Town Council was referred to in Appendix 1 to the report.

**RESOLVED** that the contents of the report be noted.

#### **438. PLANNING ENFORCEMENT**

The Committee considered the report of the Chief Executive providing an update on the current status of the Planning Enforcement Policy, Practice and Guidance and the Harm Matrix. The current policy was attached as Appendix 1 to the report and Appendix 2 detailed the proposed revised policy with tracked changes to highlight the amendments made.

Members noted the current enforcement activity for the last six months. It was reported that the number of cases had significantly increased compared to previous years but that there had also been an increase in the number of cases closed. Appendix 3 to the report provided more information in relation to the quantum of work across the Enforcement Team.

When presenting the report, the Group Manager - Planning Services advised that the date on the front of the Policy would be changed to reflect the month the policy was approved. It was clarified that the flow chart shown on page 83 would not now be included in the revised policy.

In response to a question, the Group Manager - Planning Services confirmed that standard letter templates had been updated and were being used across the service.

**RECOMMENDED** that the revised Planning Enforcement Policy, Practice and Guidance (attached as **APPENDIX 1** to these Minutes) be adopted.

#### **439. SECTION 106 AGREEMENTS - SIX MONTHLY UPDATE**

Councillor Mrs P A Channer declared an interest in this item of business as she was a Member of the Overview and Scrutiny Committee.

The Committee considered the report of the Chief Executive providing an update on Section 106 (S106) agreements. The Overview and Scrutiny Committee had considered a report (attached at Appendix A) at its meeting on 30 August and the Planning Policy Manager advised Members of the issues raised which included Section 52 agreements, the Community Infrastructure Levy (CIL); and the collaboration between the S106 Monitoring Officer and other services.

Members were advised that the vacant S106 Monitoring Officer role within Planning services had recently been recruited into and a significant part of this role would be monitoring S106s and the introduction of CIL. In addition, an annual review of the non-financial contributions to S106s would be carried out to ensure compliance.

It was noted that S106 agreements were a way that the Council secured financial contributions, facilities or work to prescribe, compensate or mitigate the impacts of development. Members were advised of the process in place for negotiation, decision, monitoring and enforcement of such agreements and that this policy was regularly reviewed.

In response to a question regarding clawback dates, the Planning Policy Manager advised that these started from receipt of the relevant monies and clarified that the Council was only liable for monies where it was the recipient.

A particular development and its S106 arrangements and Essex County Council's assessment of costs were raised by a Member and in response the Planning Policy Manager advised he would look into this and advise all Members accordingly.

Members were advised that payments were index linked to inflation and cost appraisals had to take into account any limitations that a S106 agreement may have and any

options for further funding. Following this the Council has to decide whether to proceed with that particular project taking into consideration the implications.

**RESOLVED** that the contents of the report be noted.

#### **440. BROWNFIELD LAND REGISTER**

The Committee considered the report of the Chief Executive updating on work to prepare and publish a Brownfield Land Register, following the issue of guidance by the Department for Communities and Local Government (DCLG) on 28 July 2017.

An extract from National Planning Practice Guidance was attached at Appendix 1 to the report. It was noted that preparation of a Brownfield Land Register would involve a two stage process and a diagram explaining this was attached at Appendix 2.

The report detailed the work involved in each of the following parts and it was noted that part 2 would only take place following a suitability, availability and achievability assessment and consultation.

- Part 1: Identifying potential brownfield sites
- Part 2: Identifying sites for 'permission in principle'

In response to a question the Planning Policy Manager outlined the process and explained that currently 300 sites were being assessed.

**RESOLVED**

- (i) that the Brownfield Land Register guidance outlined in the report be noted;
- (ii) that draft Part 1 of the Brownfield Land Register be brought to the next meeting of this Committee (16 November 2017) for consideration.

#### **441. MALDON DISTRICT GREEN INFRASTRUCTURE STRATEGY**

The Committee received the report of the Chief Executive presenting the project brief for the Maldon District Green Infrastructure Strategy (Appendix 1 to the report).

It was noted that the need for a District wide Green Infrastructure Strategy had been identified in the Local Development Plan (LDP) Scheme in February 2016 and Appendix 1 would form the remit for consultants to prepare that strategy.

**RESOLVED** that the Maldon District Green Infrastructure Strategy Project Brief be noted.

#### **442. HISTORIC REVIVAL WATERFRONT PROJECT OUTCOMES**

The Committee considered the report of the Director of Customers and Community updating Members on progress made towards the completion of the Coastal Revival Funded, Historic Waterfront, Revival Project.

The report provided detailed background information regarding the project, including its links to the Maldon and Heybridge Central Area Masterplan and the aims of the feasibility study undertaken. A number of project outputs were set out in the report and an executive summary of the Historic Waterfront Project report was provided at Appendix 1. Appendix 2 set out the required project outputs, a summary of the consultants findings and how the Council may wish to take forward each output to delivery.

Councillor S J Savage raised some concern regarding the accuracy in relation to a map showing footpaths and in response the Chairman requested that he raise his concerns with the Group Manager (Leisure, Countryside and Tourism) outside of the meeting.

In response to a question, the Urban Design Officer provided the Committee with an update regarding the Combined Military Museum and discussions regarding relocation.

Some concern was raised regarding the ability to view documents containing large graphical images through the Modern.Gov system. In response, the Committee Services Supervisor advised that Committee Services were looking at ways to reduce the size of agenda packs.

## **RESOLVED**

- (i) that the findings of the consultants employed to undertake the Historic Waterfront Revival Project be noted;
- (ii) that comments be collated

## **RECOMMENDED**

- (iii) that the Council's Corporate Projects Task and Finish Working Group be requested to manage the next steps of the project as set out in **APPENDICES 2 and 3** and below:

The Consultants recommendations are set out in the following list. The main project should be an application to the Heritage Lottery Fund Parks for the People fund for work that involves:

- restoring the qualities of the historic Edwardian park.
- creating a park café with new toilets for the public and changing rooms for the splash park to replace the current toilet block. We (the consultants) think that it would probably be optimal for it to incorporate a flexible space that can incorporate community events of different type and functions such as weddings. It would probably be a popular facility and offer a good return on investment.
- improving the appearance of the kiosks (if not replaced) and creating a more attractive outdoor seating area in their vicinity.
- extending and modernising Maldon District Museum, and employing a curator – manager. Maldon District Council (MDC) should help the museum to take a wider role in conserving and telling the whole Maldon story, including the maritime heritage.

- replacing the public realm at Hythe Quay with surfacing that is more attractive and in keeping with the heritage, and reduces the impact of parking, while not compromising the operation of the businesses there.
- adapting the Bailiff's workshop and classroom occupied by the Gig Club to provide flexible ground floor space that can be used for activities of different sort.
- providing a better interpretation and wayfinding system, including panels that tell the story of the Battle of Maldon and Maldon Salt. This would ideally extend to the town centre and along the river.

**443. MALDON AND HEYBRIDGE CENTRAL AREA MASTERPLAN - ADOPTION AS SUPPLEMENTARY PLANNING DOCUMENT**

The Committee considered the report of the Chief Executive presenting the final version of the Maldon Heybridge Central Area Masterplan (the Masterplan) (Appendix 1 to the report).

It was noted that the final copy of the Masterplan incorporated all of the approved amendments following the public consultation and consideration by this Committee which had resolved to remove 'the bridge' across the River Chelmer from the masterplan.

The revised Project 7 Heybridge Creek Connection was attached at Appendix 2 to the report) and highlighted a number of amendments made.

In response to concern raised regarding key intervention six as shown in Appendix 1 to the report, the Urban Design Officer explained that what was shown in the Appendix was indicative and any bollards, surface treatment, signage etc. would be subject to a full highways audit for safety and accessibility.

**RESOLVED**

- (i) that the changes to the Maldon and Heybridge Central Area Masterplan as set out in this report including removal of the bridge across the River Chelmer, be agreed;

**RECOMMENDED**

- (ii) that the Maldon and Heybridge Central Area Masterplan (as set out in Appendix 1 to the report), be adopted.

**444. MALDON DISTRICT DESIGN GUIDE - REPORT ON PUBLIC CONSULTATION AND PROPOSED AMENDMENTS**

The Committee considered the report of the Chief Executive presenting the findings of the comments received through public consultation on the Maldon District Design Guide (the Guide). The report also outlined a number of proposed amendments and additions to the Guide and seeking endorsement for Officers to prepare a final document for endorsement and subsequent adoption as a Supplementary Planning Document.

The draft Maldon District Design Guide was attached as Appendix 1 to the report. It was noted that 20 responses to the public consultation had been received and these were detailed in Appendix 2. Appendix 3 set out the responses, policy responses and proposed amendments.

The Guide set out the design considerations and design quality expected in the District for all development proposals and aligned with the Local Development Plan. It was noted that once adopted, the Guide would become a material consideration in the planning process.

Councillor A K M St. Joseph commented on the photographs of woodlands used in the introduction to the Design Guide and suggested that alternatives be sought. The Urban Design Officer advised that she would contact Councillor St. Joseph regarding this outside of the meeting.

The Chairman thanked the Urban Design Officer for her work on this project.

### **RESOLVED**

- (i) that the proposed amendments to the draft Maldon District Design Guide following public consultation be approved;
- (ii) that the Chief Executive be authorised to prepare the final Maldon District Design Guide for adoption as a Supplementary Planning Document by the Council.

#### **445. LONDON SOUTHEND AIRPORT: CONSULTATION CONCERNING THE INTRODUCTION OF NEW APPROACH PROCEDURES**

The Committee received the report of the Chief Executive providing an overview of and seeking Members' views on a consultation being undertaken by London Southend Airport (LSA) on new procedures for the approach to the airport.

Councillor Mrs P A Channer advised that she had requested this matter be brought before the Committee. The Planning Policy Manager report that Councillor P G L Elliott (the Council's representative on the Southend Airport consultative body) and himself had recently attended a meeting with the air traffic control manager at LSA with representatives of Burnham-on-Crouch Town Council.

It was noted that the consultation related to proposed changes to the approach patterns for aircraft onto the final approach path into the airport. Members were advised that the proposals were part of a worldwide, European and UK roll out of performance based navigation designed to make the control of airspace around airports more efficient and safe. The report contained a number of maps which sought to illustrate the changes.

In response to a question, the Planning Policy Manager informed the Committee that routes highlighted by the LSA where possible mirrored those currently used and sought to minimise urban area over flight.

There was some discussion regarding over flying planes and the height of these, in response the Planning Policy Manager advised that this was not part of the consultation

but LSA at the recent meeting had been keen to identify the complaints procedure on their website should anyone have any concerns.

Councillor A S Fluker declared an interest in this item of business as he had written to the consultation team on behalf of the residents of Southminster, Asheldham and Dengie.

**RESOLVED** that the contents of the report be noted.

#### **446. CODE OF GOOD PRACTICE AND GUIDANCE ON THE CONDUCT OF PLANNING MATTERS**

The Committee considered the report of the Chief Executive seeking endorsement of the Code of Practice and Guidance on the Conduct of Planning Matters (attached as Appendix 1 to the report) prior to it being adopted by the Council as part of its Constitution in the light of further revision.

Following consideration and comments made by this Committee in June 2017, it was noted that the Chairman and Vice-Chairman of this Committee along with the Leader and Deputy Leader of the Council had met with Officers to review the document. The report set out the changes made to the document including Member training along with proposed changes to the constitution and site visit guidelines.

#### **RECOMMENDED**

- (i) that the Code of Practice and Guidance on the Conduct of Planning Matters (**APPENDIX 4** to these Minutes) be endorsed and the Council is recommended to adopt it as an annexe to the Constitution;
- (ii) that the changes to constitutional arrangements as set out below, be agreed:

##### Procedure Rule 13 – Voting

Add to (1) – If a Member has not been present at the meeting for the whole of the consideration of a planning application or related matter, or has not undergone fundamental induction training once such a programme has been introduced he/she shall not vote on the matter.

##### Planning and Licensing Committee Scheme of Delegation

To the Chief Executive (Director) –

In consultation with the Chairman of the Committee, to review the accuracy of agreed planning conditions due to the passage of time between the Committee decision and the issue of a decision notice consequent upon the completion of a S106 planning obligation.

##### Terms of Reference of Area Planning Committees

Delete provision (a) – To consider and report to the Council

Amend existing para. (b)(i)11 by the deletion of “The approval of”

**447. APPROVAL OF THE MALDON DISTRICT HERITAGE AT RISK REGISTER 2017**

The Committee considered the report of the Chief Executive seeking approval of the Maldon District Heritage at Risk Register 2017 (attached as Appendix 1 to the report) for publication.

It was noted that Policy D3 of the Maldon District Local Development Plan set out the Council's objective of 'safeguarding, enhancing and promoting the historic environment'. An up-to-date Heritage at Risk Register, which highlighted and promoted the Districts most vulnerable heritage assets was an essential tool in meeting these objectives. Members were advised that once approved the Register would be published on the Council's website and reviewed annually.

**RESOLVED** that the Maldon District Heritage and Risk Register 2017 be approved for publication.

There being no further items of business the Chairman closed the meeting at 8.57 pm.

MRS P A CHANNER, CC  
CHAIRMAN

This page is intentionally left blank

## **PLANNING ENFORCEMENT POLICY, PRACTICE and GUIDANCE**



MALDON DISTRICT  
COUNCIL

December 2016

**APPENDIX 1**

**Maldon District Council  
Planning Policy Enforcement Guidance**

<b>CONTENTS</b>	<b>Paragraph</b>	<b>Page</b>
<b>Introduction</b>	<b>1.0</b>	<b>3</b>
<b>Policy Position</b>	<b>2.0</b>	<b>5</b>
<b>Establishing a breach of Planning Control</b>	<b>3.0</b>	<b>7</b>
<b>The Council's initial investigation</b>	<b>4.0</b>	<b>8</b>
<b>Priorities for action</b>	<b>5.0</b>	<b>10</b>
<b>Assessing the complaint</b>	<b>6.0</b>	<b>14</b>
<b>When a breach of planning control is confirmed</b>	<b>7.0</b>	<b>17</b>
<b>Securing compliance with an enforcement notice</b>	<b>8.0</b>	<b>20</b>
<b>Enforcement Appeals</b>	<b>9.0</b>	<b>22</b>
<b>Other Planning Enforcement Powers</b>	<b>10.0</b>	<b>25</b>
<b>Enforcement Policy for MDC</b>	<b>11.0</b>	<b>29</b>
<b>Appendix 1</b>		<b>32</b>
<b>Appendix 2</b>		<b>36</b>

(Appendix 1 – page 2)

## APPENDIX 1

### 1.0 INTRODUCTION

- 1.1. The Town and Country Planning Acts give discretion to the Local Planning Authority (LPA) in the exercise of its powers for the control of unauthorised development. This document sets out the context for the operation of the planning enforcement service in Maldon District Council, and the approach that the District Council will take in promoting compliance with planning requirements and dealing with breaches of planning control.
- 1.2. Paragraph 207 of the National Planning Policy Framework (NPPF) states that:
- “Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate the alleged cases of unauthorised development and take action where it is appropriate to do so.”***
- 1.3. In the light of the above Framework, this policy statement has been prepared to outline the approach that will usually be adopted by the Council in resolving how will deal with unauthorised development and sets out the procedures that will expect to follow. This guide will enable us to work in a proportionate way according to the breach or offence committed.
- 1.4. This policy and guidance is in accordance with the National Planning Policy Framework (NPPF) by establishing a formal planning enforcement policy which provides a clear statement of the decision making framework in dealing with alleged breaches of planning control, explaining the Council's enforcement procedures and practices.

#### **Maldon District Council – Enforcement Objectives**

- 1.5. The District Council is committed to effective enforcement of planning control and when considering what action to take, regard will be paid in each instance to the prevailing circumstances and the particular impact of the unauthorised development in question. The Council views breaches of planning control very seriously and has an enforcement team within the Development Management section of the Planning and Regulatory Services to investigate and take action against unauthorised development. The service seeks to achieve the following objectives:
- 1.6. These objectives are:
- To promote compliance with planning requirements
  - To remedy the undesirable effects of unauthorised development

(Appendix 1 – page 3)

## **APPENDIX 1**

- To bring unauthorised activity under control to maintain the credibility and achieve the purpose, of the planning system
- To strike an acceptable balance between protecting the amenity of the citizens of Maldon and other interests of acknowledged importance, and allowing development to take place
- To provide a service that will pursue pro-active initiatives that would improve the environment and built heritage, safeguard the amenities of the area and support the policies of the development plan

### **Expediency and the Public Interest**

- 1.7. In considering whether to take any enforcement action, the determining issue for the Council will be whether the breach of planning control causes significant harm and it is in the public interest to take enforcement action.
- 1.8. Severe harm to public amenity will normally arise through those breaches of planning control which involve unauthorised works to a Listed Building, unauthorised works within a Conservation Area and unauthorised development which is contrary to Development Plan Policies. Action can also be taken to require owners to improve the appearance and condition of land and property, in the interests of local amenity.

### **The Council's Enforcement Objectives**

- 1.9. An owner or occupier of land can, without a specific planning permission or certificate of lawful use, be at a disadvantage if they subsequently intend to dispose of their interest in the land in question, and have no evidence of any permission having been granted for development. The Council appreciates that some developments have occurred over time and have gone unnoticed, but it has to investigate when complaints are made, or consider through their own investigations that matters need to be formalised.
- 1.10. The Council will be responsive to all potential enforcement matters and will pursue the following key objectives:
  - Respond to complaints about potential unauthorised development
  - Ensure that development is carried out in accordance with planning approvals
  - Be fair and take action that is proportionate to the breach or offence, in a responsive, helpful and consistent manner

(Appendix 1 – page 4)

## APPENDIX 1

### 2.0 POLICY POSITION National Policy

- 2.1. The Council is mindful that enforcement action is a discretionary power but it is important that Local Authorities develop their own policy on enforcement matters. The Council will take action when it is expedient to do so, and any action will be commensurate with the seriousness of the breach of control.
- 2.2. It is only an offence to carry out development without planning permission in ~~a few~~ certain instances. Section 73A of the Town and Country Planning Act 1990 (as amended) specifically provides that planning permission may be granted to regularise development already carried out.
- 2.3. Government Policy Guidance makes it clear that enforcement action should not be taken simply to remedy the absence of a planning permission where development is otherwise acceptable on its planning merits. However, it is important that the Council responds to complaints and seeks to remedy breaches of planning control.

### Other Planning Policy Guidance

- 2.4. Some breaches are more serious than others, and some require immediate action, for example, to prevent the destruction of an historic fabric or structure, an important tree or belowground archaeology. Apart from the seriousness of the breach, the following matters have to be taken into consideration:
  - The Adopted Maldon District Replacement Local Plan (2005) remains the current adopted Local Plan.
  - The Maldon District Local Development Plan is the emerging Plan for the District and will constitute the new up to date statutory Development Plan for the District once adopted.
  - Through the Localism Act 2011, the Government has introduced a new tier of planning at the neighborhood level. Local communities will be able to prepare a Neighborhood Development Plan for their area which sets out specific planning policies.
  - Although they are not part of our statutory development plan, supplementary planning guidance documents (SPDs) (such as planning frameworks and briefs and conservation area appraisal and management strategies) play an important role in our planning decisions.
  - The National Planning Policy Framework (NPPF) was published on 27 March 2012. Amongst other things, the new guidance replaces many existing Planning Policy Statements (PPSs), Planning Policy Guidance notes (PPGs) and Circulars. The guidance is a material consideration in planning decisions.

(Appendix 1 – page 5)

## APPENDIX 1

- The Planning Practice Guidance was first published on 6<sup>th</sup> March 2014. It was a result of a commitment to reform the Planning system to make it simpler, clearer and easier for people to use, allowing local communities to shape where development should go and not go.
- The provisions of the Human Rights Act 1998 when making decisions relating to planning enforcement.
- The principles of the Enforcement Concordat; Good Practice Guide for Small Businesses 1998 are proposed to continue to be applied. These principles include:
  - There will be openness in dealing with business and others.
  - Enforcers will be helpful, courteous and efficient.
  - Complaints procedures will be publicised.
  - Enforcement decisions will be taken in a proportionate manner.
  - Enforcement officers will strive for high standards of consistency.
  - To take into consideration the planning history of the site
  - To seek specialist help from legal, trees and conservation experts.
  - To be aware of relevant appeal decisions and case law decisions.
  - To note information provided by the owner/occupier or interested parties.

2.5 Government has given Councils the primary responsibility of taking whatever enforcement action may be necessary, in the public interest, within their administrative area. A private individual cannot initiate planning enforcement action, so they often look to the Council to act to remedy any concerns that they may raise.

## APPENDIX 1

### 3.0 ESTABLISHING A BREACH OF PLANNING CONTROL

3.1 A breach of planning control is defined in the Town and Country Planning Act 1990 as:

***“the carrying out of a development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted.”***

3.2 A breach of planning control is normally a form of development (a building/engineering operation, use or other activity) that is unauthorised, in that it does not have the benefit of planning permission or other required consent. It includes development not carried out in accordance with a planning permission, and any breach of condition. The fact that something is unauthorised does not, in itself, amount to an offence.

3.3 This contrasts with other elements of planning law, where certain works and activities are in fact offences that can be prosecuted in the courts. These include:

- Unauthorised works to listed buildings
- Unauthorised works to or the removal of protected trees
- Unauthorised advertisements

3.4 Underpinning all of this is a large body of case law. There is a range of powers available to Local Planning Authorities to take enforcement action to deal with breaches of planning control and these are contained in the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act, 1991), the Planning (Listed Buildings and Conservation Areas) Act 1990 and related Regulations

(Appendix 1 – page 7)

## APPENDIX 1

### 4.0 THE COUNCIL'S INITIAL INVESTIGATION

#### How to report a suspected breach

4.1 Most investigations into breaches of planning control result from complaints received from members of the public or from Ward Councillors. The Council can be contacted by letter, ~~using the on-line form telephone, email or email in person.~~ It is essential that complainants submit details in writing as this ~~Written complaints are preferred as this~~ avoids ambiguity and provides the Council with an accurate basis on which to proceed with an investigation.

4.2 Complaints should be addressed to ~~the Group Manager~~ Enforcement, Planning and Regulatory Services Directorate, Maldon District Council, Princes Road, Maldon, Essex, CM9 5DL (or as stated on the Council's web site) who will then ensure it is dealt with by the appropriate investigating officer(s).

4.3 The Council will need the following information before any investigation will take place:

- The precise location of the site or property to which the complaint relate.
- The exact nature of concern, i.e. the potential breach of planning control.
- An indication of any harm caused by the breach.

4.3.4 The following information will assist the Council in investigating the alleged breach:

- When the breach occurred.
- Any information on the identity of the person(s)/organisation responsible, if known.

Comment [ML1]: Has been split to make clearer what information is essential.

#### Confidentiality

4.4.5 All investigations are carried out in strictly confidential basis and the investigation team will not reveal the complainants' details. On serious breaches of planning control, which may warrant prosecution, or result in an appeal, the complainant may be invited to give a witness statement. However, such occasions are rare and involvement in those cases is on a voluntary basis.

#### Anonymous Complaints

4.5.6 Anonymous complaints will not normally be investigated.

#### Recording Complaints

4.6.7 All complaints of potential breaches are entered onto the enforcement records system upon receipt, and a unique reference is created so that progress on each complaint received can be monitored. The name, address and telephone number of the complainant and the details of the complaint are logged. ~~Complaints will usually be acknowledged by email or letter within 5 working days, giving the~~

(Appendix 1 – page 8)

## APPENDIX 1

~~name and telephone number of the investigating officer. Complainants are kept informed throughout the investigation process and are welcome to contact the investigation officer at any time for a progress update.~~

Comment [ML2]: This is explained at 4.9 so deleted so it doesn't repeat itself.

4.74.8 The initial investigation will usually involve checking the planning and any building regulation history of the particular site to establish any relevant development history and whether any conditions have been attached to any approval granted. Sometimes it is also necessary to check other records held by the Council such as council tax or business rates, environmental health records or outside organisations ~~such as the DVLC at Swansea,~~ in order to get a complete understanding of events.

4.84.9 A site inspection may prove necessary to establish further facts and evidence. Investigation Officers identify themselves when on site and explain the reasons for the visit. The owner/occupier or people working on the site will be interviewed to obtain factual information and photographs and measurements may also need to be taken. A detailed note is made of the findings in the investigation file, which is used to record all visits and discussions at meetings or on the telephone.

### Informing Complainants

4.94.10 Following an initial acknowledgement the Council will keep all complainants informed of progress at the following key stages of the process including, where relevant:

- The initial assessment, advising what action will be taken
- Any Issue of enforcement notice, or outcome of other action
- If an appeal has been lodged against a formal notice
- Closure of the investigation

### Rights of Entry

4.104.11 Investigation officers have the immediate right of entry onto sites under the provisions of S196A, S196B and 196C of the Town and Country Planning Act 1990, to all non-residential land and buildings. Twenty four hours' notice must be given if access is required to a residential property. If access is denied for any reason, a formal Right of Entry Notice can be served. If entry is subsequently refused, a warrant to effect entry can be applied for from a serving Magistrate.

### Obtaining additional information

4.144.12 In some circumstances, when it has not been possible to establish the facts through normal investigation, or when the co-operation from the owner/occupier is not forthcoming, a formal Planning Contravention Notice (PCN) may be served. This requires the recipient to provide information relating to the breach within 21 days from the date of service of the Notice.

4.124.13 The complainant may occasionally be asked to assist with the investigation, for example, by keeping a diary of events relating to the breach. This is helpful where problems occur in the evenings or at weekends or outside normal working hours. Such help is voluntary, but the evidence may be crucial when assessing

(Appendix 1 – page 9)

## APPENDIX 1

whether a breach has occurred and whether further action is considered expedient to remedy the breach.

- | 4.134.14 If there is no breach of planning control evident, then an explanation will be given to the complainant and the file will be closed.
- | 4.144.15 The impact of some developments and activities are more harmful than others. The Council will nevertheless seek to ensure that all reported breaches of planning control are resolved as quickly as possible. The Council however, needs to ensure that full and proper consideration is given to the matter and this can often take several weeks, occasionally months, prior to resolving whether a breach of planning control has occurred and determining what further action is merited.
- | 4.154.16 When there is enough evidence to establish whether a breach has taken place, the investigation officer will advise on the most appropriate course of action or, no further action, in some cases. The investigation officer will contact the complainant to inform them of the outcome.

(Appendix 1 – page 10)

**5.0 PRIORITIES FOR ACTION**

5.1 Some complaints will be more urgent than others and these will need to be given a higher priority including:

- Works to listed buildings, below ground archaeology and works to protected trees that cause immediate and irreversible harm, including any advertisement that may be affixed to them or other operational development such as builders storage, temporary buildings or parking areas that may be positioned next to them and likely to cause harm
- Councillor, MP enquiries and formal Parish Council complaints where there appears to be a serious breach or an offence.
- Operational development/building works where substantial and ongoing loss of amenity is likely to occur
- Fly posting which appears to be intensive and is likely to cause an amenity or public safety issue
- Breaches of planning control that are likely to be immune from enforcement within six months
- Changes of use affecting residential amenity
- Other development (e. g building works/changes of use and untidy condition of land/buildings)
- Building works affecting the character and appearance of a Conservation Area.
- Other advertisements and satellite dishes attached to protected trees or listed buildings

5.2 On receipt of a complaint, it will be prioritised, as discussed below, and a preliminary investigation will be undertaken to establish whether a breach of planning control has, or is likely to, have occurred.

**5.3 Complaints classified as 'Immediate' – investigation within 1-2 working days**

- Works to listed buildings
- Works to protected trees
- Demolition of important unlisted buildings in conservation areas
- Significant unauthorised building works
- Breach of conditions where there is likely to be irreversible harm, e.g. contaminated land, archaeology and flood defence or drainage works

## APPENDIX 1

### 5.4 Complaints classified as 'Urgent' - investigation within 15 working days

- Councillor or MP complaints and formal Parish Council complaints where there appears to be a serious breach or an offence.
- Operational/building works/change of use/compliance with conditions/obligations affecting residential amenity where ongoing severe neighbour disturbance is being caused
- Operational development within conservation areas
- Where immunity rules are likely to shortly apply if action is not taken

### 5.5 Complaints classified as 'Non-Urgent' – investigation within 25 working days

- Other changes of use
- Other building works/condition of land/compliance with conditions
- Advertisements and satellite dishes (not attached to trees or listed buildings) (conservation areas to be prioritised)

#### ~~Planning Advice and Enquiries~~

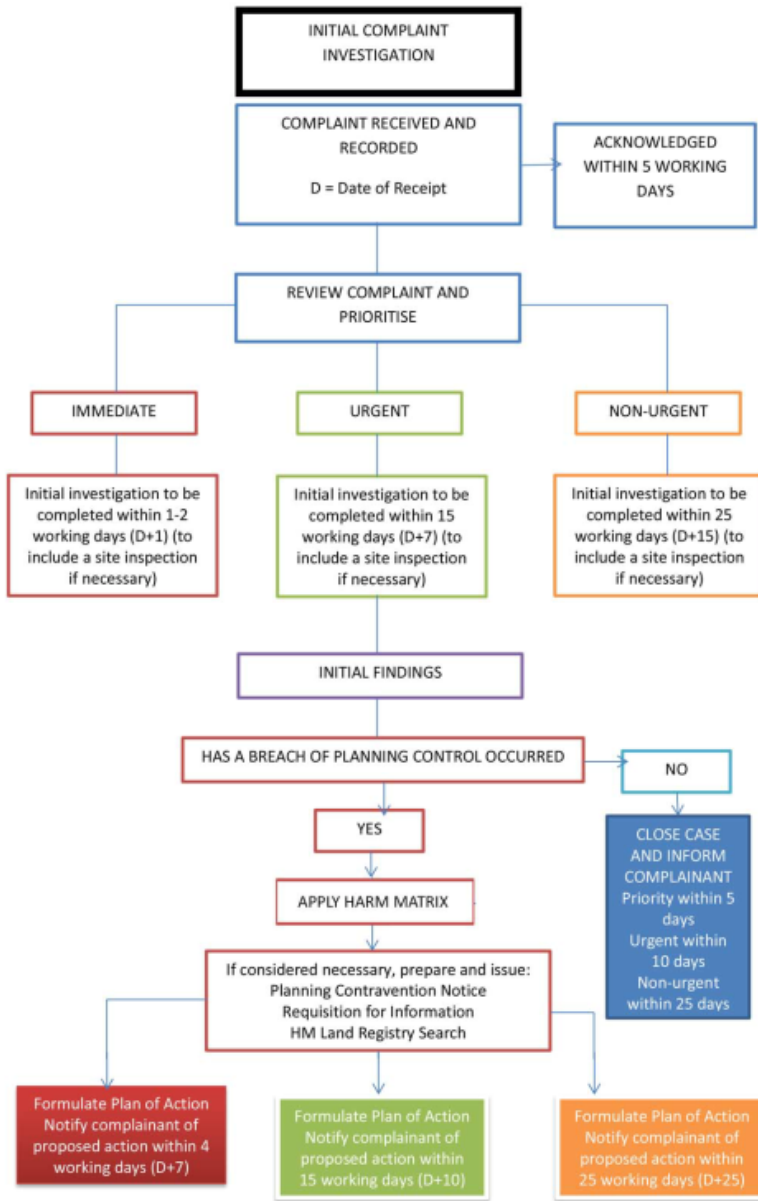
~~5.6. For general planning enquiries and advice that do not constitute a complaint into a breach of planning control, the matter will be looked into within 10 working days.~~

#### Initial Investigation Flow Chart

5.6. The following flow chart shows the procedure followed when investigating complaints.

(Appendix 1 – page 12)

APPENDIX 1



Comment [ML3]: Amended flow chart inserted that includes application of the harm matrix.

(Appendix 1 – page 13)

## APPENDIX 1

### 6.0 ASSESSING THE COMPLAINT

- 6.1 An important element of the Council's Enforcement Policy is a prioritisation or ~~Harm Assessment Matrix~~. A number of local authorities have adopted an approach which attracts scores depending on the nature and location of an alleged breach of planning control. ~~and~~ Maldon Council first adopted this approach in April 2014. Following an initial site visit by an officer, an assessment of the breach is carried out in order to determine what level of officer time will be dedicated to investigating the breach further.
- 6.2 The matrix sets out a minimum score which needs to be achieved in order to ~~prompt justification for~~ justify further investigations. A score below ~~the designated minimum~~ 5 would normally result in no further action by the Planning Enforcement Team ~~in respect of the breach, although a other than an invitation to submit a retrospective application would normally be invited~~ in an attempt remedy/regularise the breach ~~and it will be expected that this is sum bitter in a short period of time~~.
- 6.3 ~~As detailed in the next section~~ Scores are based on ~~(i)~~ matters of fact i.e. does it relate to a listed building or ~~whether if~~ the site is in a conservation area, ~~plus and~~, ~~(ii)~~ ~~to~~ matters of judgement i.e. whether the breach would result in irreversible harm or ~~whether or if the development, if~~ permission was granted, would the development result in an undesirable precedent.

(Appendix 1 – page 14)

HARM ASSESSMENT CRITERIA (see APPENDIX 1)

1. IS THE BREACH?

For **operational development** - are the works ongoing, stopped, complete or stable?

For **change of use** - is the use intensifying, is there an increase in activity, is there a change in appearance/ activity. Is residential occupation involved?

2. HIGHWAY SAFETY

YES = New/alterd access to a highway, significant increase in use of access, creates on street stopping and or parking

3. OTHER SAFETY ISSUES

YES = Hazardous materials stored, potential fire risk, interference with safety of other uses/users

4. CAUSING STATUTORY NUISANCE

YES = Where dust, vibration, smell, fumes, light creating adverse physical effect upon health, and or where Environmental Health are taking action

5. COMPLAINANT

Self-explanatory

6. AGE OF BREACH

Self-explanatory taking into account the '4 year' or the '10 year' rule.

7. DEGREE OF HARM

Is the harm widespread or localised?

Widespread\_– more than 10 residential properties directly affected, major policy breach i.e. dwelling in countryside or commercial operation in countryside, can be seen over several tens of metres, pollution is air borne and carried over neighbourhood.

Local\_– this is where there is harm but only to immediate neighbours affected.

## APPENDIX 1

### 8. IRREVERSIBLE HARM

YES = effectively a planning judgement as to whether retention of operational works or change of use can be permitted without causing permanent damage to the environment or living conditions. Would an application be refused planning permission?

### 9. FLOOD RISK

Development within its respective Flood Risk Zone [graded 1 (low risk to 3 high risk)]

### 10. BREACH OF PLANNING CONDITION , ANY ARTICLE 4 DIRECTIONS,OR LIMITATIONS IMPOSED BY PERMITTED DEVELOPMENT RIGHTS

This will be a matter of fact and thus either yes or no

### 11. AFFECT ON THE CHARACTER OR APPEARANCE OF A CONSERVATION AREA

This will be a matter of fact and degree and a matter of either yes or no

### 12. LISTED BUILDING OR AFFECTING THE SETTING

This will be a matter of fact and degree and a matter of either yes or no

### 13. SPECIAL AREAS

This relates to whether the breach lies within a specific special project area such a the Maldon central regeneration area and is part of a specific proactive enforcement project

### 14. SENSITIVE AREAS

This will be a matter of fact and thus either yes or no. These special areas include:

AONB, SSSI, Ramsar Convention Site, Area of Archaeological Importance, Scheduled Ancient Monument

### 15. UNDESIRABLE PRECEDENT

A matter of judgement i.e. if similar work or a change of use has occurred would this undermine an important planning principle for the area or cumulatively cause harmful change to character of the area?

#### Review against matrix

~~An Enforcement Harm Assessment Form will normally be completed by an officer who has seen the development. Only complaints which score 5 or above will be further investigated. Those with a lesser score will be informed of the breach/likely breach and invited to remedy/regularise it. In both cases the complainant is to be notified of the Council's Actions.~~

(Appendix 1 – page 16)

## APPENDIX 1

### 7.0 WHAT HAPPENS WHEN BREACHES OF PLANNING CONTROL ARE CONFIRMED?

- 7.1. The majority of breaches of planning control are resolved informally and by negotiation with the owner/occupier. Formal action only takes place when it is expedient and where other means to resolve the problem have failed. **It is a last resort.** The Council will take effective enforcement action when it is essential to protect the amenity of the area, the public or highway safety, and to maintain the integrity of the development management process within the District. The impact of some developments are more harmful than others and therefore action will be in the public interest and commensurate with the breach of planning control.
- 7.2. Authorised officers will normally decide whether formal notices are justified in accordance with agreed policies and action will be approved under the powers delegated to The Director of Planning and Regulatory Services or through the relevant committee/councillor involvement according to the Council's Constitution at the time.
- 7.3. When it is clear that there is a breach of planning control, the Council will draw this to the attention of the person responsible and advise them of the most appropriate course of action. These may be:
- If the breach is minor with no significant effects – no further action required
  - If the development is such that it is in line with relevant local plan policies – the Council will usually invite a 'retrospective' application for planning permission
  - If the breach is likely to be immune from enforcement action due to the passage of time – an application for a Certificate of Lawfulness will be invited if permission is unlikely to be granted – the Council will ask for the use to cease, or unauthorised development to be removed. A suitable period of time is allowed, depending on what needs to be done. For example, tenants must be allowed reasonable time to find somewhere else to live
  - As a last resort, formal notices can be issued, such as a Breach of Condition Notice or Enforcement Notice, if it is considered expedient having regard to the development plan policies and other material considerations. This is a discretionary decision, which is made on a case by case basis. The Council must be able to justify taking formal action and be sure that the steps specified in the notice and the period for compliance with each step, are reasonable
  - In extreme cases, the Council can serve a notice to require any relevant activity to cease (a Stop Notice or Temporary Stop Notice) and there is provision to obtain a planning enforcement injunction to restrain an actual or apprehended breach of planning control

(Appendix 1 – page 17)

## APPENDIX 1

- When a Breach of Condition Notice has been served and has not been complied with, the person who has been served with the notice can be prosecuted in the Magistrates Court
- When an Enforcement Notice takes effect but is not complied with, any owner/occupier or person who has control of, or has an interest in the land, can be prosecuted in the Magistrates Court
- Where appropriate, and if other means have not secured a cessation of the breach being enforced against it, the Council will consider using its default powers to take direct action to remedy the breach of planning control, recovering the cost from the owner or placing a legal charge on the land
- When it is considered expedient not to pursue enforcement action against a breach of planning control, so no further action will be taken

7.4. A robust case supported by evidence needs to be made to ensure any subsequent appeal and prosecution can be supported.

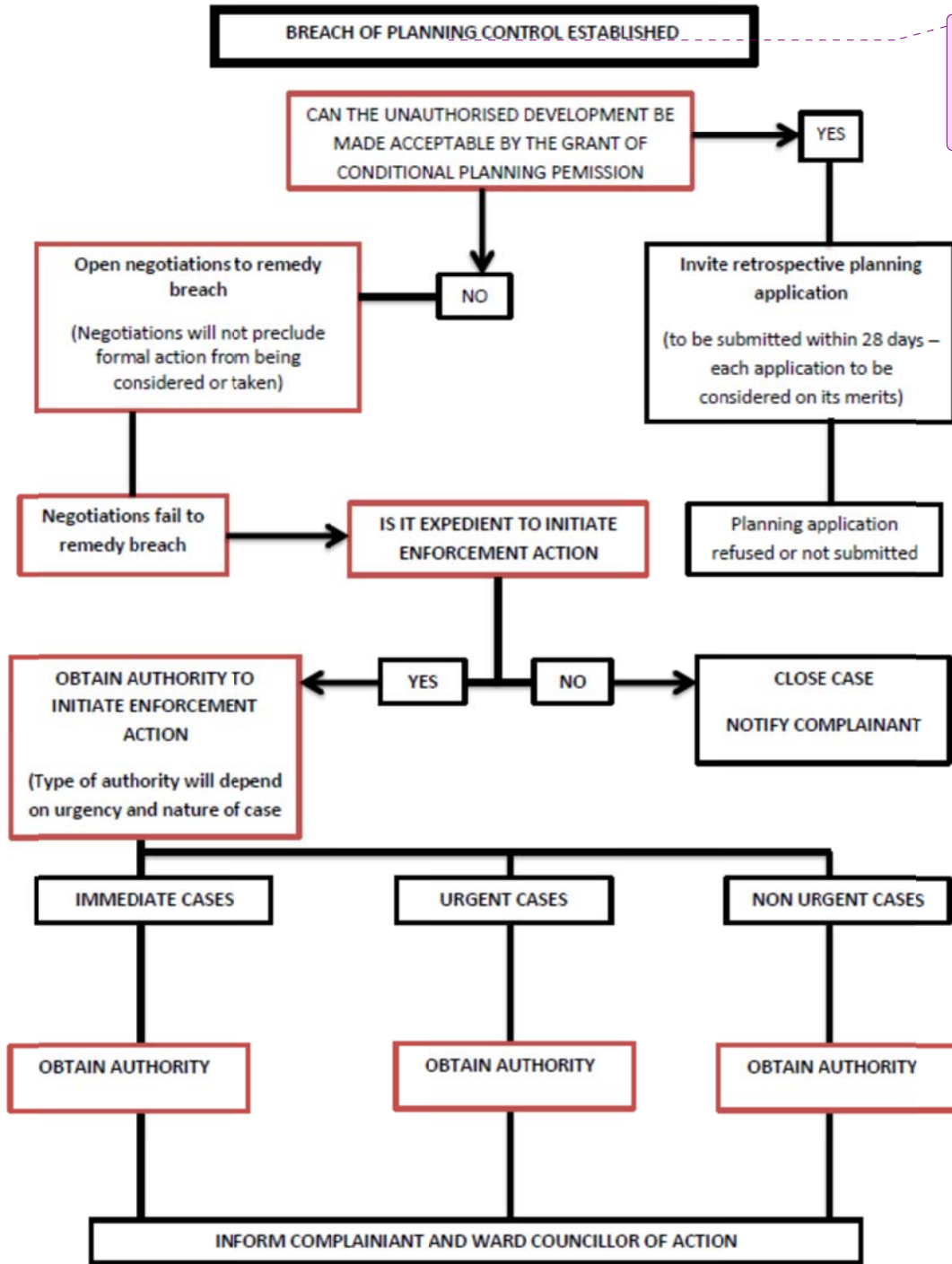
### **Flow Chart – Breach of Planning Control Confirmed**

7.5. Once a breach has been established, further investigation may be required and a time-table to be followed to resolve the breach according to its priority classification.

~~7.6. The flow chart below shows the procedure and time table to be followed once a breach has been established.~~

(Appendix 1 – page 18)

**ENFORCEMENT PROCEDURES FLOW CHART**



Comment [ML4]: Was an addition to the original policy. However, agreed to be removed as it is an internal process rather than being something that needs to be included within the formal adopted policy; also limits flexibility that might be required for individual cases.

## APPENDIX 1

### 8.0 SECURING COMPLIANCE WITH AN ENFORCEMENT NOTICE

- 8.1 An offence occurs when an owner/occupier fails to comply with the requirement of an enforcement notice.
- 8.2 The Council will take action when the terms of an enforcement notice have not been complied with. Such action may involve:
- Prosecution of the parties concerned in the local courts
  - The issue of an injunction through the court system
  - Direct, or 'default' action
- 8.3 The Council will usually seek to bring the matter to a successful conclusion as quickly as possible through the pursuit of action in the courts. If someone is found guilty of failing to comply with the terms of an enforcement notice, a maximum fine of £20,000 may be imposed by the court. If the Notice is still not complied with, a further prosecution may be brought and this is likely to continue until the Notice has been complied with.
- 8.4 The Council will not necessarily withdraw from taking action in the courts once this has commenced, and this may apply even where the breach of planning control may be rectified before the case is heard.
- 8.5 In the case of a persistent offence against an unauthorised activity, an injunction may be sought through the County Court or High Court. More severe penalties may be imposed in these circumstances if the offence continues.
- 8.6 In exceptional circumstances, the Council will consider taking direct or default action to remedy a breach of planning control. This may involve the use of contractors to enter a site and physically remove or put right unauthorised building work. Such circumstances are likely to arise for example when the breach of planning control has not been remedied, despite the imposition of fines by the Courts or for continued breaches of planning control. In such cases, the Council will seek to recover its costs, in the form of a charge on the land for example, or by other means.
- 8.7 If an enforcement notice is served against a development, which is subject to a planning or listed building appeal which is currently under consideration by the Planning Inspectorate, the outcome of such an appeal may be awaited before taking further action to secure compliance with an enforcement notice. When an appeal has been dismissed, compliance with the requirements of an enforcement notice will then be pursued.
- 8.8 When the Council believes that an enforcement notice has been complied with, the fact will be confirmed to the owner/occupier of the land and to anyone who has complained about the development or activity. ~~Even though an enforcement notice has been discharged, the record will remain in the Land Charges Register unless specifically requested to be removed by the owner/occupier.~~

(Appendix 1 – page 20)

## APPENDIX 1

### 9.0 ENFORCEMENT APPEALS

- 9.1 S174 of the Town and Country Planning Act 1990 (as amended) provides a right of appeal against an enforcement notice. The Planning Portal (web site) provides a link to relevant information.
- 9.2 An appeal must be made before the notice takes effect (normally 28 days after the date of issue of the notice). An appeal cannot be entertained if it is made after the date the notice takes effect.
- 9.3 An owner, occupier or any other person, who has an interest in the land, even if a copy of the notice has not been issued on that person, may make an appeal.

#### **Grounds of Appeal**

##### **Ground A – that planning permission ought to be granted (or a condition or Limitation be discharged)**

- 9.4 This is the 'deemed application' seeking planning permission and requires payment of a fee both to the Council and the Planning Inspectorate. The Council will ensure that the reasons for issuing the notice are well founded and in accordance with the development plan (where appropriate). The Council will then be able to argue on the planning merits of the case that planning permission should not be granted, or that permission should only be granted subject to conditions.

##### **Ground B – that as a matter of fact the alleged unauthorised development has not taken place**

- 9.5 The Council will, by investigating the breach of planning control and through collection of appropriate evidence, ensure that the matter alleged in the notice has occurred and has, in fact, taken place.

##### **Ground C – that the development (if it has taken place) does not constitute a breach of planning control**

- 9.6 Enforcement action will only be taken when it appears to the Council that there may have been a breach of planning control. Before taking action, the Council will consider:
- Whether the alleged breach constitute development
  - If it does constitute development, does it need planning permission
  - Whether planning permission been granted

##### **Ground D – that the time limit for taking enforcement action has passed**

- 9.7 When there is any doubt about when the breach of control first took place, before taking enforcement action, the Council will initiate an investigation to establish when the breach first occurred. This investigation may include the service of a Planning Contravention Notice, a Requisition for Information and an HM Land Registry search. Evidence may also be sought from neighbours, previous owners and any other person with personal knowledge of the history of the site. This will ensure from the evidence available that the development has not achieved immunity from enforcement action due to the passage of time.

(Appendix 1 – page 21)

## APPENDIX 1

9.8 The immunity from taking enforcement action will be four years in respect of unauthorised building works or for the making of a material change of use of any building for use as a dwelling house, or non-compliance with a planning condition which prohibits the use of a building as a dwelling house.

9.9 In all other cases, the period from immunity will be ten years.

### **Ground E – that copies of the notice were not properly served**

9.10 The Council will take all reasonable steps to issue a copy of the enforcement notice on every person with an interest in the land as required by the legislation based on the information obtained by a Requisition for Information, a Planning Contravention Notice or HM Land Registry search or by such other means necessary.

9.11 Notices will be issued by Recorded Delivery mail or by hand.

### **Ground F – that the steps required by the notice exceed what is necessary to remedy any injury to amenity**

9.12 The Council will ensure that the steps required to be taken are both necessary and the minimum required in order to remedy the breach of planning control. The steps will be stated clearly so that there is no doubt about what has to be done.

### **Ground G – that the period for compliance is too short**

9.13 The period for compliance will be a reasonable period having regard to the particular circumstances of the case and the actual or potential harm being caused to the amenity of the area by the unauthorised development.

9.14 When particular personal family hardship will result in order to comply with an enforcement notice, the Council will ensure an adequate period for compliance is granted.

### **An appeal made under Ground A**

9.15 This ground of appeal relates solely to the planning merits of the case. If an appeal is successful under this ground, planning permission can be granted for the development enforced against.

### **An appeal made under Grounds B, C, D and E**

9.16 An appeal made under any or all of Grounds B, C, D and/or E are grounds often referred to as the 'legal grounds' of appeal.

### **An appeal made under Grounds F and G**

9.17 An appeal made under either Grounds F and/or G are not concerned with the planning merits of the case or legal issues but regards to the requirements of the Notice itself.

## APPENDIX 1

### Appeal Methods

- 9.18 An appellant may elect an appeal to be heard at a public inquiry, an informal hearing or by way of an exchange of written statements.
- 9.19 It is the Planning Inspectorate who will make the final decision as to the appropriate method of appeal.
- 9.20 Unless complex planning issues or legal issues are involved, the Council will normally request enforcement appeals to be dealt with by way of an exchange of written statements.

### Award of Costs

- 9.21 Costs can be awarded against both parties whichever method of appeal is used if either the Council or the appellant is found to have acted unreasonably in accordance with statutory procedures.
- 9.22 When it appears to the Council that an appeal has been made simply to delay or prolong the requirements of a notice taking effect, or if Ground A has been cited where the development is clearly contrary to planning policy, or some other ground is cited which clearly has no chance of success, the Council will apply for an award of costs against the appellant.

## APPENDIX 1

### 10.0 OTHER PLANNING ENFORCEMENT POWERS

10.1 Some breaches of planning control are the subject of separate legislative codes.

10.2 These include:

- Listed Buildings
- Advertisements
- Trees
- Condition of land or buildings affecting the amenity of an area

10.3 Where the legislative requirements are the same, this enforcement policy will form the basis for any action taken by the Council on these matters.

#### Listed Buildings

10.4 The Council attaches particular importance in ensuring that any alterations to listed buildings are properly authorised. The statutory provisions for the preservation of buildings of special architectural or historic interest are contained in the Planning (Listed Buildings and Conservation Areas) Act 1990. It is an offence under Section 9 of the Act to carry out unauthorised works to a listed building which would affect its character. The owner of a listed building or those who have an interest in the property or who have carried out the works may be prosecuted by the Council irrespective of whether consent is later obtained retrospectively or the unauthorised works later made satisfactory. A person found guilty of an offence may be liable to a fine of up to £20,000 and/or a term of imprisonment of up to two years. There is no time limit upon the District Council to pursue listed building enforcement action.

10.5 A Listed Building Enforcement Notice may also be served requiring remedial works to the building within a certain time scale. There is a right of appeal but failure to comply with the Notice is an offence, where a penalty of up to £20,000 may be imposed.

#### Advertisements

10.6 The display of advertisements is controlled under the Town and Country Planning (Control of Advertisements) Regulations 1992 (as amended) [and the Anti-Social Behaviour Act 2003 \(part C\) Penalty Notices for Graffiti and Fly Posting.](#)

10.7 Advertisements are divided into three main groups:

- Those advertisements that are expressly excluded from local planning authority control
- Those that have 'deemed consent' so that the local planning authority's consent is not required provided the advertisement is displayed under certain rules
- Those advertisements that require the local planning authority's consent

10.8 The rules are complicated and seek to control amongst other things, the height, size and illumination of the advertisement.

(Appendix 1 – page 24)

## APPENDIX 1

10.9 Any person who displays an advertisement, without consent, is acting illegally. It is open to the Council to take a prosecution in the Magistrates Court for an offence under Section 224 of the Town and Country Planning Act 1990 (as amended).

10.10 The Council can issue a Fixed Penalty Notice in relation to the display of an advertisement to any person that there is reason to believe that that person personally affixed or placed the advertisement to, against or upon the land or object on which the advertisement is or was displayed under the Anti-social, Crime and Behaviour Act 2014; this is discussed further below.

Comment [ML5]: Added paragraph to explain fixed penalty notices.

10.11 Unless the offence is particularly flagrant or repeated, the planning authority may not initially consider it necessary to prosecute for an advertisement offence. Instead, they may invite the advertiser to apply for the consent required and if refused, there will be a right of appeal. The continued display of an advert after consent has been refused, and any subsequent appeal dismissed, may well result in prosecution. The maximum fine on conviction is currently £1,000 with an additional daily fine of one-tenth of the maximum penalty of a continuing offence.

10.12 Any display of an advertisement without consent is an offence which is immediately open to prosecution, or in some cases to the removal or obliteration if the Council decide to take such action. If the advertisement identifies the advertiser, the Council must give 48 hours before obliteration or removal takes place, where the regulations apply.

10.13 Some advertisement may be displayed on highway land in which case there are powers that Essex County Council (ECC) has to remove these directly. The Council will seek ECC to remove these where complaints are received but in some cases, such as fly posting joint action may be necessary.

### **Action available to Councils either as the Local Planning Authority (LPA) and / or the Highway Authority**

10.14 The Council could take a number of actions including:-

1. Remove the signs directly (with or without an attempt to attempt to recover the costs)
2. Proceed to prosecute in the magistrates court
3. Where the signs are on highway land or fixtures seek Essex County Council to take direct action using their highways powers.
4. Possible use of ~~an anti-social behaviour order (ASBO)~~ a Fixed Penalty Notice under the Anti-social, Crime and Behaviour Act 2014.
5. Do nothing (depending on the scale of the matter)

Comment [ML6]: Changed to take into account FPN

10.15 The only two reasons local authorities can take into account in dealing with advertisements under the Advertisement Regulations are public safety and amenity.

10.16 Failure to comply with these conditions will allow the LPA to immediately serve a removal notice giving a reasonable time for such signs to be removed otherwise the LPA could undertake the work and recover the costs.

(Appendix 1 – page 25)

## APPENDIX 1

- 10.17 **Removal (as the Local Planning Authority):** Local planning authorities have specific powers to deal with unauthorised advertisements under planning legislation and allows local planning authorities to remove and dispose of any display structure which, in their opinion, is used for the display of illegal advertisements. This provision does not apply to signs in a building to which the public have no right of access. Where possible, the owners / advertisers should be notified before removal.
- 10.18 **Prosecution (as the Local Planning Authority):** The local planning authority is empowered to prosecute those who display advertisement signs without consent including the beneficiary of such advertisement signs. The fine for displaying without consent is up to £1,000 (level 3 of the standard scale) and £100 per day as fine if after conviction, the advertisement continues to be displayed. A person shall be deemed to have display an advertisement if is:
- (a) The owner of the property or the occupier of the land on which the advertisement is displayed
  - (a) The advertisement gives publicity to his goods, trade, business or other concerns
- 10.19 Notices should be served on both the owner / occupiers of land on which the advertisement is displayed as well as the beneficiaries of the advertisement unless:
- (a) They have no knowledge of the advertisement displayed
  - (b) They have not given consent to the advertisement displayed
- 10.20 The local planning authorities do not need to give notice of removal if the advertisements are displayed on land or properties belonging to the Council.
- 10.21 **Removal (by the Highway Authority).** The Highway Act 1980 makes provisions for Highway Authorities to remove advertisement signs, painting, etc. affixed to the surface of Highway or any other structure in the Highway. Illegal signs can be removed without giving notice to the perpetrators.
- 10.22 **Prosecution (by the Highway Authority).** Prosecution under the Highway Act 1980 attracts a fine of up to £1000.
- 10.23 **Anti – social behaviour orders (ASBOs).** This was new measure introduced in 1999. Graffiti and fly-posting are defined as an offence and a Penalty Notice can be served. 14 days' notice is required to be given of impending action. This type of action is considered more appropriate where there is an extensive problem of illegal fly posting.

### Trees

- 10.24 Under Section 198 of the Town and Country Planning Act 1990, the local planning authority has the right to make provision for the preservation of trees in their area by issuing a Tree Preservation Order. Any unauthorised works to such protected trees is an offence under Section 210 of the Act. It is an offence to cut down, uproot or wilfully destroy a tree, or wilfully damage, top or lop a tree in such a manner as to likely destroy it. The offence is liable on summary conviction to a fine of up to £20,000.

(Appendix 1 – page 26)

## APPENDIX 1

10.25 Trees in Conservation Areas are similarly protected subject to the size of such a tree and under Section 211 and Section 212 of the Act, the same penalties apply.

### **Land or buildings that adversely affect the amenity of an area**

10.26 Under Section 215 of the Town and Country Planning Act 1990, the local planning authority may take steps to require land or buildings to be cleaned up when its condition adversely affects the amenity of an area. The Council may serve a notice on the owner and occupier of the land requiring steps to be taken within a specified period.

10.27 The notice takes effect after 28 days from date of service. There is a right of appeal to the Magistrates Court and then to the Crown Court, during which time the notice is of no effect. If an appeal is unsuccessful, the notice takes effect and it is an offence not to carry out the steps required. If the notice is not complied with, the Council will consider prosecution proceedings or enter the land and carry out the required works. The costs incurred in carrying out the works will be recovered from the owner of the land.

### **Proceeds of Crime Act - POCA**

10.28 The Proceeds of Crime Act 2002 (POCA) sets out the legislative scheme for the recovery of criminal assets with criminal confiscation being the most commonly used power. Confiscation occurs after a conviction has taken place. The aim of the asset recovery schemes in POCA is to deny criminals the use of their assets, recover the proceeds of crime and to deter criminality.

10.29 During the enforcement process the authority seeks full recovery of costs, where possible. Consideration will be given ~~for the~~to the appropriateness and expediency of the use of POCA powers, including but not limited to the seeking of confiscation orders, in appropriate cases in which a defendant has benefited from criminal conduct or a criminal lifestyle. This will both ~~to~~ help cover the costs of enforcement and ~~to~~ ensure an effective disincentive to ongoing breaches of planning control.

Comment [ML7]: New section

(Appendix 1 – page 27)

## APPENDIX 1

### 11.0 ENFORCEMENT POLICY FOR MALDON DISTRICT COUNCIL

11.1 Taking into account updated national policy guidance, local pressures and resources available the following policies will be applied across the district:

#### POLICY ENF1

The Council is committed to a planning enforcement function prioritised in the following order:

##### **Category 1. Immediate – investigation expected within 1-2 working days**

- Works to listed buildings
- Works to protected trees
- Demolition of important unlisted buildings in conservation areas
- Significant unauthorised building works
- Breach of conditions where there is likely to be irreversible harm, e.g. contaminated land, archaeology, flood defence and drainage
- Advertisements that may cause immediate harm such as 'A' boards affecting pedestrian safety, advertisements including fly posting which are intensive in scale or are affixed to trees and/or listed buildings

##### **Category 2. Complaints classified as 'Urgent' - investigation within 15 working days**

- ~~Councillors, formal Parish Council and MP complaints where there appears to be a serious breach or an offence.~~
- Operational/ building works/ change of use/ compliance with conditions/ obligations affecting residential amenity where ongoing severe neighbour district being caused
- Operational development within conservation areas
- Where immunity rules are likely to shortly apply if action is not taken including mobile homes/ caravans

##### **Category 3. Complaints classified as 'Non-Urgent' – investigation within 25 working days**

- Other changes of use

(Appendix 1 – page 28)

## APPENDIX 1

- Other building works/condition of land
- Compliance with conditions unless significant harm is likely e.g. flood [defence or contaminated land issues](#)
- Advertisements and satellite dishes (not attached to trees or listed buildings) (conservation areas to be prioritised)

### POLICY ENF2

Complainants shall receive an email or letter of acknowledgement that the complaint is being investigated normally within 5 working days of receipt. They will receive updates based on the priority category of the investigation informing them what action the council intends to take or to close the case.

### POLICY ENF3

Formal enforcement action to remedy a breach of planning control will only take place when it is considered expedient and in the public interest to do so.

### POLICY ENF4

If there is severe harm to public amenity as a result of the failure to comply with planning conditions or unauthorised development, the Council will consider the use of stop notices, breach of condition notices, temporary stop notices and injunctions to speed up the effectiveness of the enforcement process.

### POLICY ENF5

When investigating alleged breaches of planning control involving small business uses, the Council will take a positive approach towards the continuation of the activity and it being regularised by the grant of planning permission. If, however, there is a sustainable planning objection, the Council will endeavour to assist possible relocation to alternative premises. Provided there is not a severe impact on local amenity, the Council will seek to ensure that reasonable time is given to comply with enforcement action taken against business use activities.

### POLICY ENF6

The Council will pursue, whenever possible, legal proceedings and/or the taking of direct action in the event of failure to comply with formal enforcement and related planning notices. [The Council will consider the Proceeds of Crime Act for prosecutions.](#)

### POLICY ENF7

The Council will seek to address certain enforcement matters through other appropriate enforcement agencies such as the County Highway Authority (Essex County Council), Natural England and The Environment Agency where they have more immediate or effective enforcement powers.

(Appendix 1 – page 29)

**APPENDIX 1**

The following is a brief explanation of some of the more technical terms used throughout this policy document

**Breach of Condition Notice (BCN)**

The power to serve a BCN is contained in Section 187A of the Town and Country Planning Act 1990. A notice can be issued where a condition attached to a planning permission has not been complied with. There is no right of appeal against the serving of a BCN. Failure to comply with a BCN constitutes a criminal offence.

**Breach of Planning Control**

This is a term used when development has taken place that requires specific planning permission and no such permission has been granted. The term will also apply to failure to comply with a planning condition or limitation; carrying out works to a listed building; the display of illegal advertisements; unauthorised works to protected trees and trees within conservation areas and the condition of land or buildings which affect the amenity of an area.

**Certificate of Lawfulness**

Under Section 191 of the Town and Country Planning Act, application can be made to a local planning authority for a Certificate of Lawfulness in order to confirm whether an alleged breach of planning control is now lawful for planning purposes and therefore immune from enforcement action because of the time that has elapsed since the breach first took place. For a use to become immune from enforcement action and become lawful for planning purposes the following timescales apply:

- Erection of buildings and other works. 4 years
- Changes of use of a building to a single dwelling house. 4 years
- Changes of use of buildings or land other than a dwelling house. 10 years
- Non compliance with a condition relating to the occupation of a building as a dwelling house 4 years
- Non compliance with a condition other than occupation of a building as a dwelling house 10 years

(There may be exceptions and questions of interpretation that should first be discussed with the Planning Authority)

## GLOSSARY OF TERMS

### Default Powers (or Direct Action)

Under Section 178 of the Town and Country Planning Act, local planning authorities have the right to enter land or property and carry out works which the owner or occupier has failed to comply with any steps required to be taken in an effective enforcement notice. The costs are recovered from the landowner. The costs can be made as a charge on the land, to be recovered at the time of a future sale of the land or property, if the costs cannot be recovered at the time works are carried out in default.

### Development Orders

The Town and Country Planning (General Permitted Development) Order 1995 grants 'deemed consent' for certain forms of development without the need to specifically apply for planning permission.

The Town and Country Planning (Use Classes) Order 1987 groups common uses together in a number of classes and confirms that changes occurring within the same Class would not normally require the submission of a planning application.

### Enforcement Notice

The power granted to local planning authorities to issue and serve an enforcement notice is conferred under Section 172 of the Town and Country Planning Act 1990. The Notice must clearly state:

- The alleged breach of planning control
- The steps required to remedy the breach
- The reasons why an enforcement notice has been served
- The time available to comply with the steps

The notice has to be served on anyone having an interest in the land.

There is a right of appeal against the notice provided the appeal is lodged with the Planning Inspectorate before the date the notice takes effect. Once an appeal has been lodged, the enforcement notice no longer has any effect until such time as the appeal has been determined.

### Fixed Penalty Notice

Under the Anti- social, Crime and Behaviour Act 2014 authorised enforcement officers of the District Council can issue a Fixed Penalty Notice for a number of offences. This includes fly-tipping, graffiti and fly posting.

Formatted: Font:

### Injunctions

## APPENDIX 1

When the Council consider it necessary or expedient for a breach of planning control to be restrained because it is causing serious harm to the amenity of an area, application can be made to the county court or high court for an injunction, whether or not they have exercised or are proposing to exercise any other powers of enforcement.

Such cases are rare but could be used for example when it is believed there is good evidence that works are likely to occur to protected trees or listed buildings which will result in irretrievable harm.

An injunction may be issued against a person whose identity is unknown but who is able to be identified by other means.

### **Local Planning Authority**

Maldon District Council is the local planning authority for most matters relating to the control of development within the administrative boundary except for the extraction of minerals and the deposit or waste, which is the responsibility of Essex County Council.

### **Planning Contravention Notice (PCN)**

The power to issue a Planning Contravention Notice (PCN) is conferred by Section 171 of the Town and Country Planning Act 1990. A PCN can be served when the Council wishes to find out from the owner or occupier of the land when the suspected breach has occurred and additional information relating to the breach to enable a more detailed assessment to be made. A PCN is only served if a suspected breach has occurred and invites the owner or occupier of the land to make representations or submit a planning application.

Serving a PCN cannot rectify a breach if it has occurred. Failure to respond to a PCN within a specified time limit constitutes an offence and the recipient of the notice becomes liable to prosecution proceedings being taken.

### **Requisition for Information**

A Requisition for Information will be served by the Council in order to establish the names and addresses of all persons who have an interest in land. A Notice is served when the Council intends to initiate formal enforcement action.

### **Standing Orders**

Standing Orders made under the Council's Constitution grants certain delegated powers approved by the Council to allow the Director of Planning and Regulatory Services and other officers to serve certain notices and initiate prosecution proceedings which are updated from time to time.

### **Stop Notices**

The power to issue a Stop Notice is conferred under Section 183 of the Town and Country Planning Act 1990. A Stop Notice can be issued to support an enforcement notice and has the general effect of requiring a breach of planning control to cease almost immediately.

(Appendix 1 – page 32)

## APPENDIX 1

The issue of a Stop Notice is usually made when a breach is causing harm to the amenity of an area. Compensation is payable in some cases if the enforcement notice to which the Stop Notice relates is quashed on appeal on legal grounds.

### Proceeds of Crime Act - POCA

The Proceeds of Crime Act 2002 (POCA) sets out the legislative scheme for the recovery of criminal assets with criminal confiscation being the most commonly used power. Confiscation occurs after a conviction has taken place. The aim of the asset recovery scheme in POCA is to deny criminals the use of their assets, recover the proceeds of crime and to deter criminality.

Confiscation orders under POCA are frequently used against fraudsters and drug-dealers to deprive criminals of the financial gain they have received from their criminal conduct. Less frequently used though, is the power to obtain confiscation orders against people who commit crimes under legislation administered by local authorities.

For POCA to apply there must have been a successful prosecution for the offence and the prosecutor must have asked for the confiscation order during the proceedings, or the court otherwise believes it was appropriate to make it. The order will not be made unless the defendant has benefited from the criminal conduct.

The confiscation order must be made in the Crown Court. Before making the order the Court must consider, on the balance of probabilities, whether the defendant has a criminal lifestyle or has benefited from the particular criminal conduct. The term 'criminal lifestyle' comes directly from the legislation. The key tests for deciding if an individual has a criminal lifestyle or has benefited from particular criminal conduct are found in section 75(2) and will frequently mean "an offence committed over a period of at least six months and the defendant has benefited from the conduct which constitutes the offence" (section 75(2)(c)). The confiscation order is in addition to any other penalty (e.g. fine) which may have been imposed by the Court.

(Appendix 1 – page 33)

**APPENDIX 2**

**ENFORCEMENT HARM ASSESSMENT FORM**

**TO SHOULD BE COMPLETED BY AN OFFICER WHO HAS SEEN THE DEVELOPMENT**

- All complaints arising from all retrospective refusals of planning permission will automatically receive a full investigation so it is not necessary to mark the harm score
- All Category 1 complaints under ENF1 will be investigated
- Each new complaint will be allocated scores as set out below to assess its harm. The total will provide its harm score in which its priority will be based
- Where there is no breach of planning control found the file will be closed accordingly.

POINTS ALLOCATION	SCORE
Is the breach	<del>Ongoing Development Worsening</del> (1)
	<del>Recently Commenced</del> (1)
	Stable (0)
** Highway safety issue	Yes (2)
	<del>No</del> (0)
**Other safety issue (e.g. <u>contaminated land</u> )	Yes ( <del>4</del> 2)
	<del>No</del> (0)
**Causing a Statutory Nuisance	Yes ( <del>4</del> 2)
	<del>No</del> (0)
Complainant <u>where full information has been provided as referred to in section 4</u>	<del>Immediate neighbour</del> (2)
	Members, <del>immediate neighbour</del> , MP, MDC Officer, Parish Council (1)
	<del>Other neighbour or member of public</del> (1)
	Anonymous, Malicious (0)
Age of breach	Within 6 months of immunity (2)
	<del>Less than 1 month</del> (1) <del>Less than 1 Year</del> (1)
	More than 1 year old (0)
Degree of Harm	Widespread (2)
	Local (1)
	None (0)
Irreversible Harm	Yes (3)
	No (0)
Breach of condition or Article 4	Yes <del>9</del> 4(1)
	<del>No</del> (0)
** Flood risk	Zone 3 (2)
	Zone 2 (1)
	Zone 1 (0)
**Conservation Area (or adjacent to )	Yes (2)
	No (0)
**Listed Building	Yes ( <del>3</del> 2)

(Appendix 1 – page 34)

**APPENDIX 1**

(or affecting character or setting of )	<u>No (0)</u>	
Special <del>exercise</del> <u>operations</u> or <u>taks</u> (Please provide details)	Yes (1)	
	No (0)	
**Sensitive site (please provide details)	Yes (1)	
	No (0)	
Undesirable precedent (please provide details)	Yes (1)	
	No (0)	
<b>TOTAL POINTS (HARM SCORE)</b>		

**Only Complaints which score 5 or above will be further investigated. Those with a lesser score will be informed of the breach/ likely breach and invited to remedy/regularise it. In both cases the complainant is to be notified of our actions.**

Note: \*\* These areas are likely to need specialist input from other agencies/organisations and therefore the time periods referred to in this document may be affected if any responses from the agencies/organisations are delayed.

This page is intentionally left blank



---

# Options for Regeneration of Maldon Historic Waterfront

EXECUTIVE SUMMARY REPORT  
MARCH 2017

---

PREPARED FOR MALDON DISTRICT  
COUNCIL

**COLLIERS INTERNATIONAL PROPERTY CONSULTANTS LIMITED**

Trading Name: Colliers International

Colliers International Property Advisers UK LLP.

Limited Liability Partnership registered in England and Wales no.  
OC385143

Registered office:

50 George St

London W1U 7DY

Tel: +44 20 7935 4499

[www.colliers.com/uk](http://www.colliers.com/uk)[david.geddes@colliers.com](mailto:david.geddes@colliers.com)

Tel: +44 020 7344 6582

Version Control	
Filename/Document ID	Options for Hythe Quay & Promenade Park Maldon 170224
Last Saved	31 August 2017
Owner	David Geddes

# TABLE OF CONTENTS

<b>1</b>	<b>Introduction</b>	<b>4</b>
<b>2</b>	<b>Executive Summary</b>	<b>13</b>

# 1 INTRODUCTION

The purpose of the study is to assess options for enhancement of the Hythe Quay and Promenade Park area of Maldon. The brief is specifically to assess the viability of 5 different projects for potential improvement:

- Use of Hythe Quay area for commercial activities such as specialist markets.
- A “destination hub” in Promenade Park that could include a visitor centre, heritage centre and restaurant(s).
- Improvement of facilities for visiting yachts / craft at Hythe Quay.
- Enhancement of St Mary’s Church to form a community hub.
- Improvements to Maldon District Museum.

The report also considers other options, however.

The work has been done by a consortium of professionals led by the Destination Consulting team of Colliers International. Destination Consulting specialises in providing consultancy services to places that attract visitors.

The other members of the consortium are:

- Thomas Ford Architects.
- The Morton Partnership – civil and structural engineers.
- WMC Retail Partners – consultants specialising in markets.
- Michael Copeman – historic buildings specialist.

The research for the study included an online survey of stakeholders. 75 responses were received. A separate report reproduces them in full. We also facilitated three stakeholder forums on 17 February which had large attendance. A note of points made has also been produced.

There is a detailed report with the full analysis and conclusions.

Figure 1 to Figure 7 summarise the context of the study and the current situation.



Figure 2: Assessment of current situation at Family Fun Area of Promenade Park

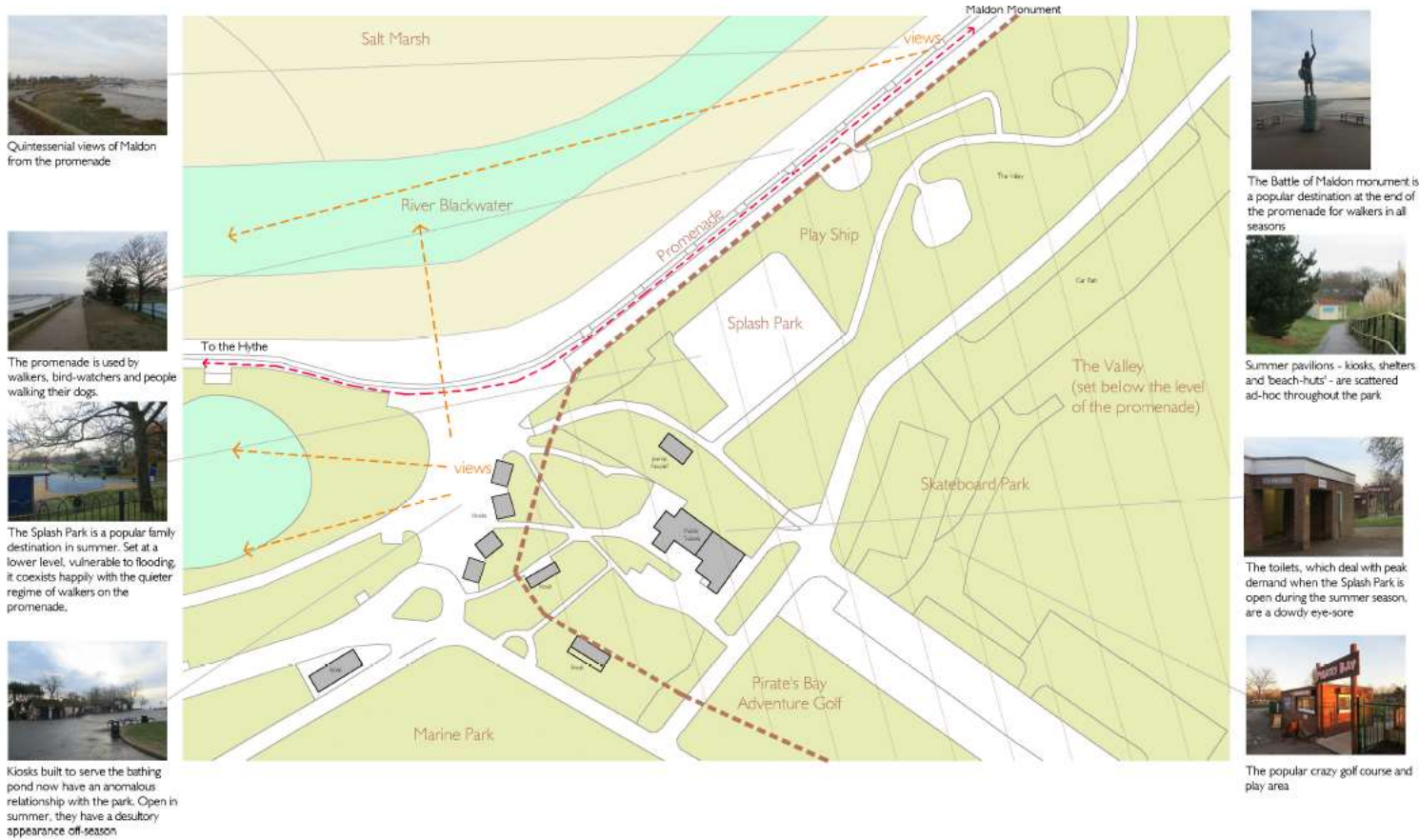


Figure 3: Assessment of current situation at Historic section of Promenade Park

Page 368



The boundary between the church & the park is poorly defined & neglected



The character of the Edwardian park has been diluted by a muddled succession of interventions



A formal drive connects the park gates to the riverside



The entrance to the park is marked by the park-keeper's lodge and formal gates



Kiosks dating from the 1930s turn their backs on the riverside



Kiosks facing the sand-pit and lake on the site of the Edwardian bathing pond



A hedge maze between the park, housing & the church creates a significant barrier and left-over spaces at the margins

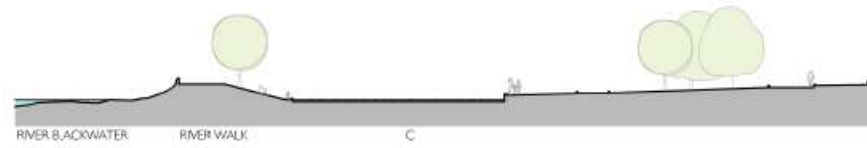


Isolated fragments of formal planting fail to coalesce into a defined boundary between the former Edwardian park and the modern playing fields

Figure 4: Current situation with toilets and kiosks in Promenade Park

KEY

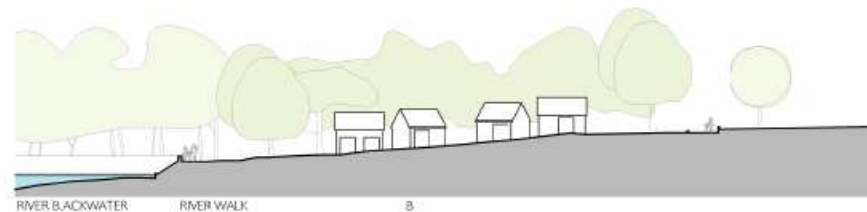
- A Existing public toilets in dilapidated condition
- B Existing kiosks do not complement the landscaped setting of the park & river walk
- C Existing splash pool - a popular summer attraction



E SECTION 3  
PARK CAFE - EXISTING



D SECTION 2  
PARK CAFE - EXISTING



C SECTION 1  
PARK CAFE - EXISTING



Figure 5: Assessment of current situation at Hythe Quay

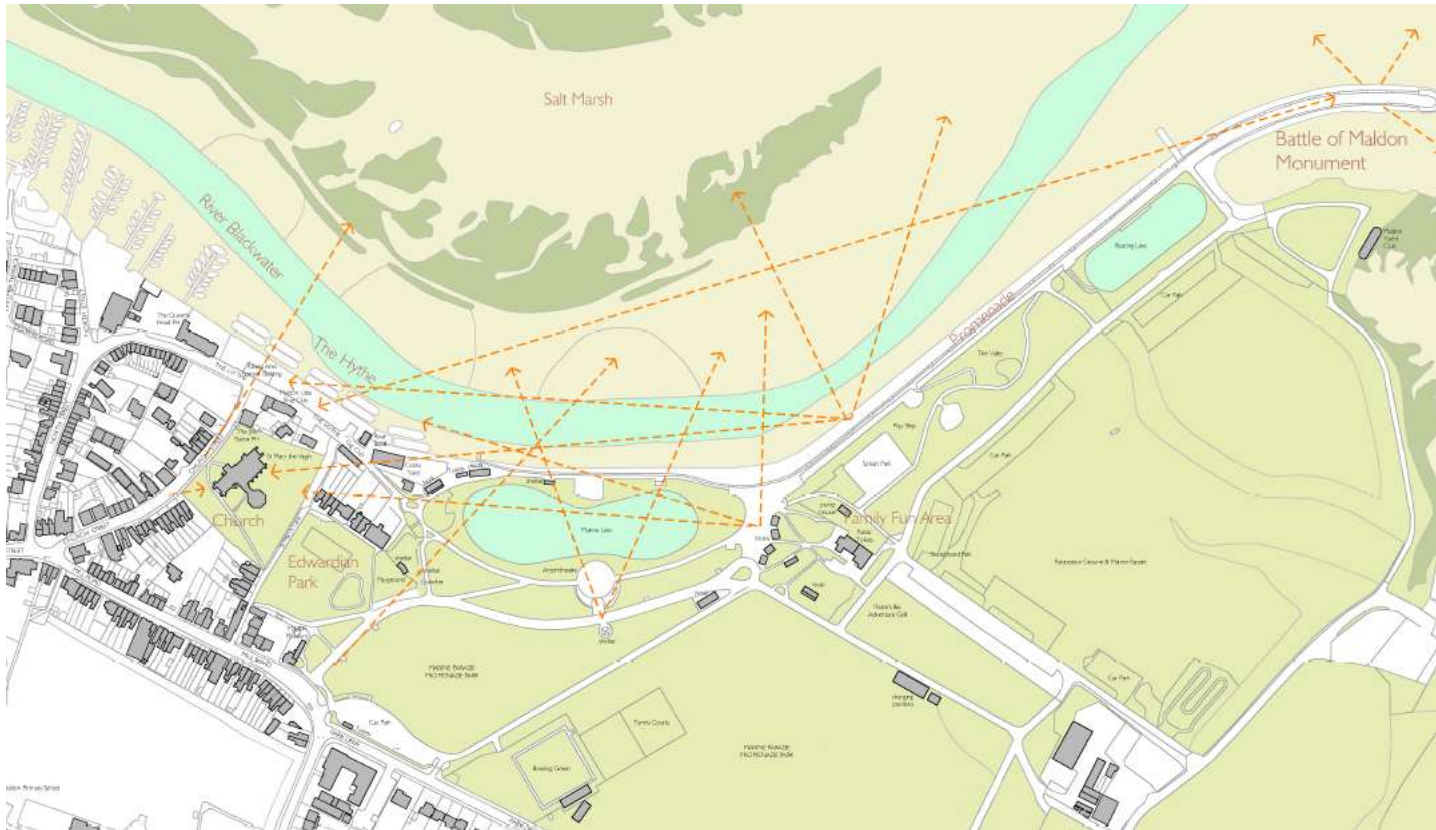
Page 370



Figure 6: Key pedestrian routes



Figure 7: Key Views





## 2 EXECUTIVE SUMMARY

The study concludes the following in relation to the specific projects that we were asked to analyse:

- Hythe Quay is not appropriate for commercial activities such as specialist markets if they require any form of permanent or semi-permanent structures because they would compromise the operation of the maritime-related businesses there, would be out of keeping with the heritage townscape, and be affected by the regular flooding of the quay. A pop-up market with stalls that are put up and taken down on the same day could, in our opinion, be a success, albeit there is little support for the idea amongst stakeholders. Our view is that there is a case for undertaking a trial.
- Our advice is that a “destination hub” that includes a visitor centre or heritage centre of size would be difficult to fund, would probably require a substantial revenue subsidy and would not be an attraction that would entice a large number of people to the area. An extension to the museum, alongside a wayfinding and interpretation system, is likely to be a better and more sustainable long term approach to telling the story of the area and encouraging visitors to move between the waterfront and the town centre.
- We advise against endeavouring to establish an exhibition-orientated maritime heritage centre at Hythe Quay for the same reason of lack of sustainability and also because it would have to take space from Cook’s Yard which would be better used for workshops.
- The large tidal range at Hythe Quay, giving a limited window of access to yachts, and reluctance of owners of modern yachts to rest them in mud, means that Hythe Quay / Promenade Park is unlikely to be a significant destination for visiting craft and that there would not be a return on investment in substantially improving facilities for them. The Maldon Harbour Improvement Commissioners have submitted plans for moderate improvement to the current pontoon which seem to be a pragmatic way forward.
- A project to repair St Mary’s Church and make it more flexible so that it can be used more easily for events like musical and theatrical performances, and exhibitions, would be a useful addition to the range of facilities in the area.

Our recommendation is that the main project should be an application to the Heritage Lottery Fund Parks for the People fund for work that involves:

- Restoring the qualities of the historic Edwardian park.
- Creating a park café with new toilets for the public and changing rooms for the splash park to replace the current toilet block. Figure 11 and Figure 12 show variations of this, one with existing kiosks replaced and the other with them refurbished. We think that it would probably be optimal for it to incorporate a

flexible space that can incorporate community events of different type and functions such as weddings. It would probably be a popular facility and offer a good return on investment.

- Improving the appearance of the kiosks (if not replaced) and creating a more attractive outdoor seating area in their vicinity.
- Extending and modernising Maldon District Museum, and employing a curator – manager. MDC should help the museum to take a wider role in conserving and telling the whole Maldon story, including the maritime heritage. Figure 13 shows what this could be like.
- Replacing the public realm at Hythe Quay with surfacing that is more attractive and in keeping with the heritage, and reduces the impact of parking, while not compromising the operation of the businesses there.
- Adapting the Bailiff's workshop and classroom occupied by the Gig Club to provide flexible ground floor space that can be used for activities of different sort. Figure 14 shows how this could be done.
- Providing a better interpretation and wayfinding system, including panels that tell the story of the Battle of Maldon and Maldon Salt. This would ideally extend to the town centre and along the river.

The project should probably not include lighting on the promenade because of the adverse impact it would have on the heritage environment and in creating light pollution that could have an adverse impact on navigation.

MDC should support the endeavours of Topsail Charters to open a tea room on a barge at Cook's Yard and to create workshops in the yard that are occupied either by craftspeople that do work related to the maintenance and restoration of historic craft, and / or artisan craftspeople that make and sell items on site, assuming that Topsail continue to operate Cooks as an active yard involved in maintaining and restoring barges and other historic craft. Figure 14 shows what this could be like. Topsail are not requesting public funding.

Figure 10 summarises the proposed project. The stakeholder consultation indicated that a project of this nature would have a high level of stakeholder support. Figure 8 and Figure 9 have indicative capital cost and funding package.

**Figure 8: Indicative Cost**

	Capital Cost
Hythe Quay Public Realm Renewal	£700,000
Wayfinding and Interpretation System	£120,000
St Mary's Church Events Centre	£300,000
Historic Park Renewal	£1,250,000
Park Café, toilets and changing	£1,500,000
Revitalised Museum	£1,000,000
Project Planning & Applications	£130,000
<b>Total:</b>	<b>£5,000,000</b>

**Figure 9: Indicative Funding**

Heritage Lottery Fund	£4,300,000
Private Sector	£200,000
Other Charitable Foundations	£250,000
MDC	£250,000
	<b>£5,000,000</b>

We recommend that MDC considers options for the management of Promenade Park and Hythe Quay, with the objective of ensuring that it is treated as a business unit with a clear manager and appropriate branding and marketing for the major visitor destination that it is.

MDC should support other initiatives to maintain the vitality of the boatyards in Maldon and providing training in traditional skills. This could be the subject of a Coastal Communities Fund application that benefited all yards.

Figure 10: Proposed projects for regeneration of Maldon Historic Waterfront

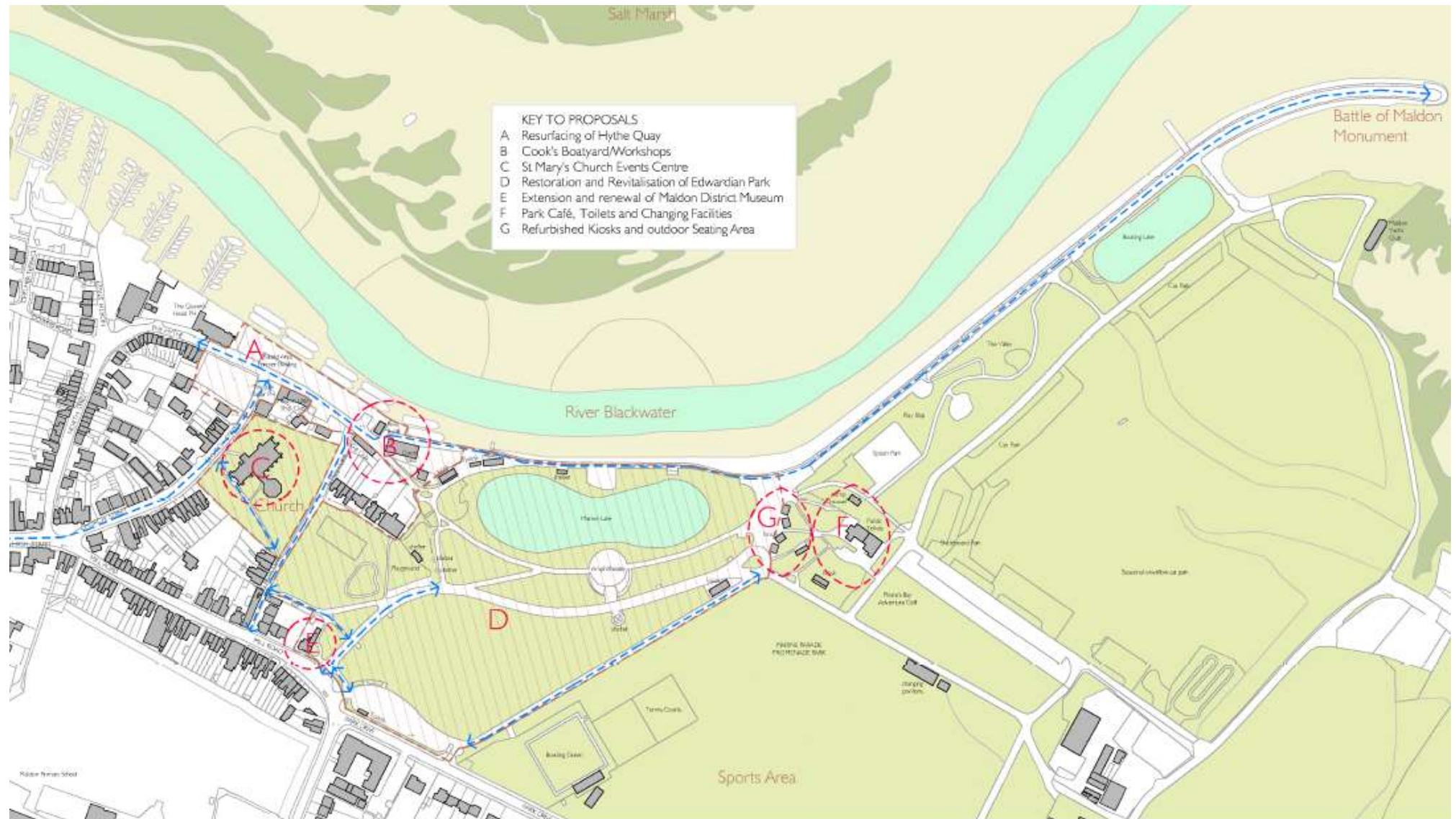


Figure 11: New park café and toilets, with new kiosks to replace existing

KEY

New Park Cafe, Kiosks & Toilets

UPPER GROUND LEVEL

- A Kiosk
- B Cafe
- C Kitchen

LOWER GROUND LEVEL

- D Existing Kiosks renovated
- E Toilets & changing Rooms
- F Gravel Terrace
- G Paved Terrace
- H Plant rm relocated to area E

- Pedestrian routes
- Views

Page 378



B UPPER LEVEL PLAN  
PARK CAFE - PROPOSED



A LOWER LEVEL PLAN  
PARK CAFE - PROPOSED



C SECTION 6  
PARK CAFE - PROPOSED



Figure 12: New park café, with existing kiosks retained and refurbished

KEY

New Park Cafe, Kiosks & Toilets

UPPER GROUND LEVEL

- A Kiosk
- B Cafe
- C Kitchen

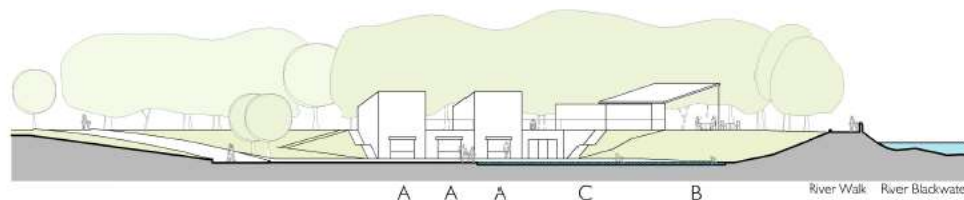
LOWER GROUND LEVEL

- D Kiosk
- E Toilets & changing Rooms
- F Gravel Terrace
- G Paved Terrace
- H Plant rm relocated to area E

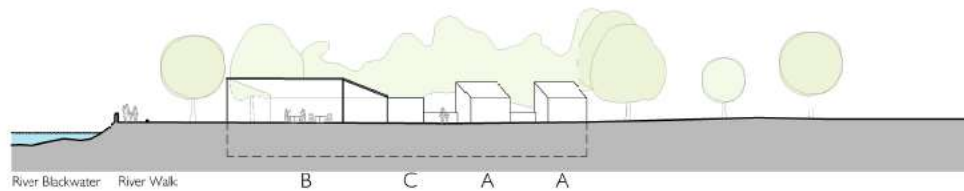
- Pedestrian routes
- Views



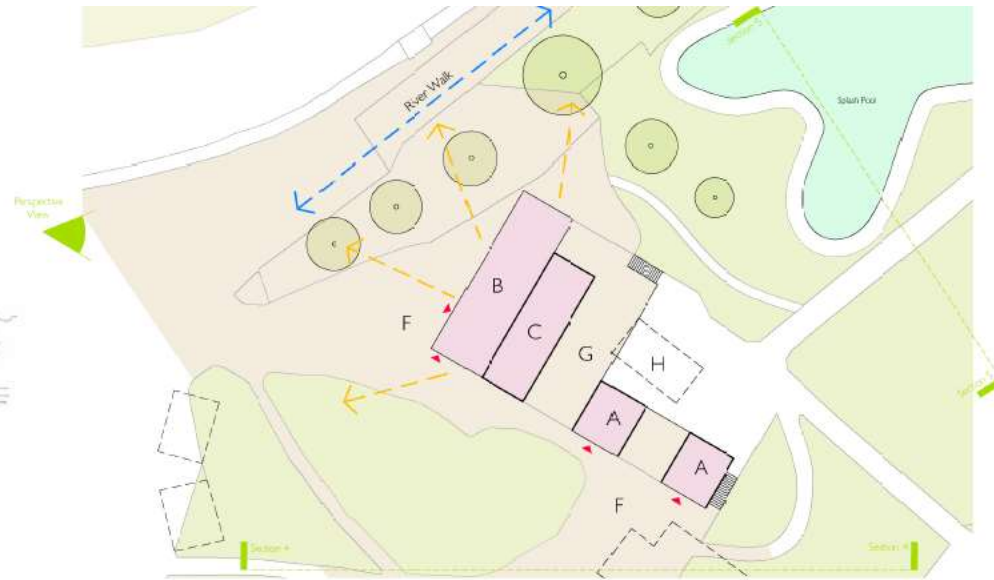
E PERSPECTIVE VIEW  
PARK CAFE - PROPOSED



D SECTION 5  
PARK CAFE - PROPOSED



C SECTION 4  
PARK CAFE - PROPOSED



B UPPER LEVEL PLAN  
PARK CAFE - PROPOSED



A LOWER LEVEL PLAN  
PARK CAFE - PROPOSED

Figure 13: Improvements to Museum

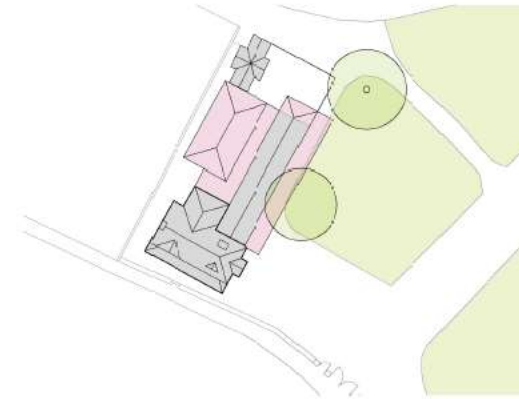


C PROPOSED PERSPECTIVE VIEW  
MALDON MUSEUM

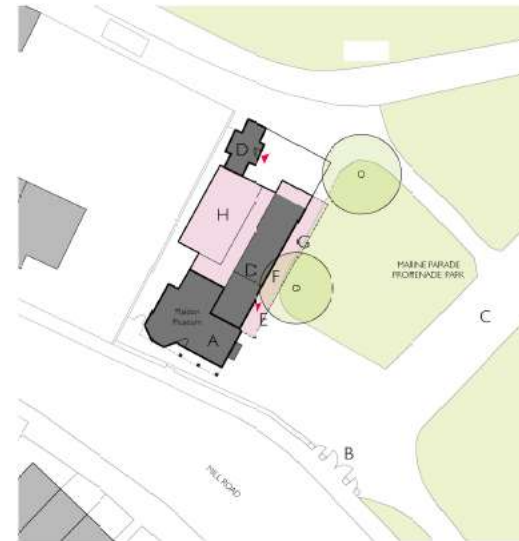
- A Existing Museum (former Gatekeeper's edge)
- B Edwardian Park Gate
- C Edwardian promenade & landscape re-insatated
- D Existing Museum & out-buildings adapted
- E New entrance & cafe
- F New display window
- G New entrance canopy
- H New accommodation (the remodeled Museum will include renovated & new displays, additional education/communications room, accessible toilet and storage)



D EXISTING VIEW  
MALDON MUSEUM

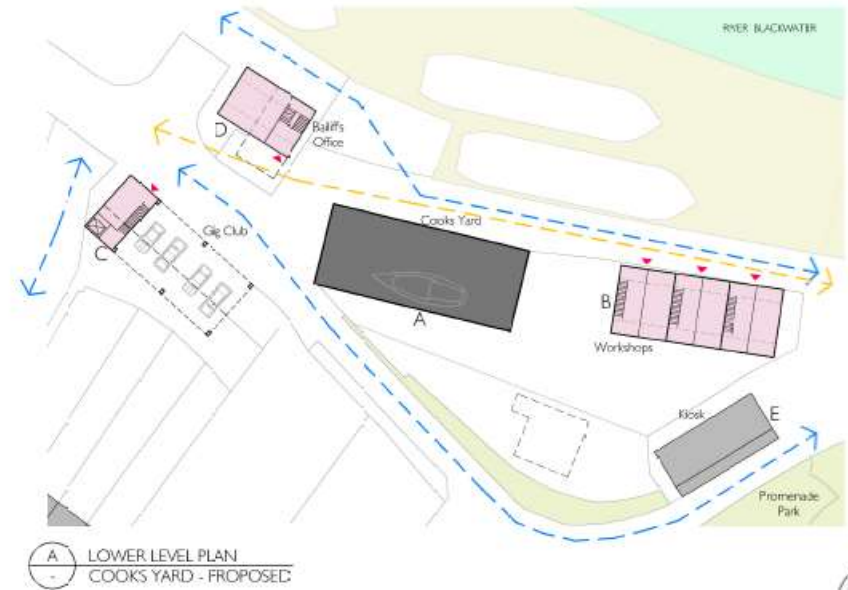
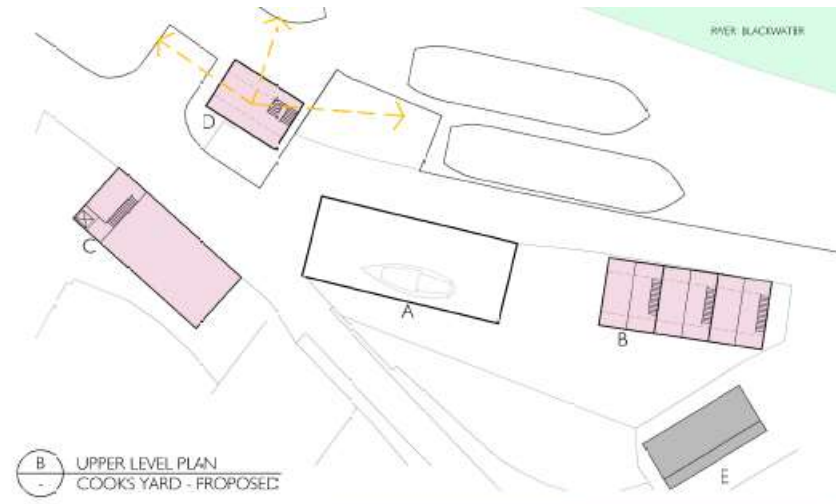
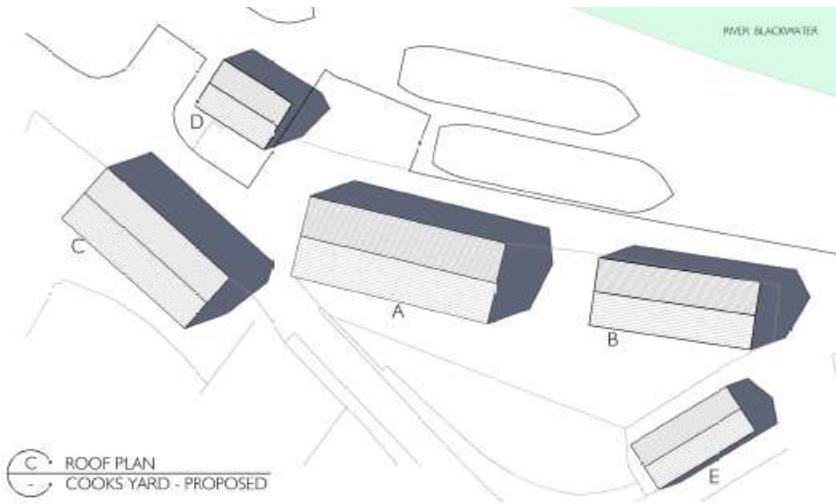


B ROOF PLAN  
MALDON MUSEUM



A GROUND FLOOR PLAN  
MALDON MUSEUM

Figure 14: Workshops at Cooks Yard



**KEY**

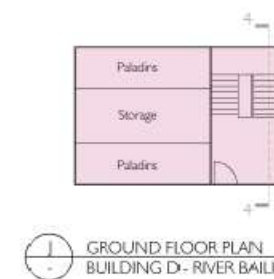
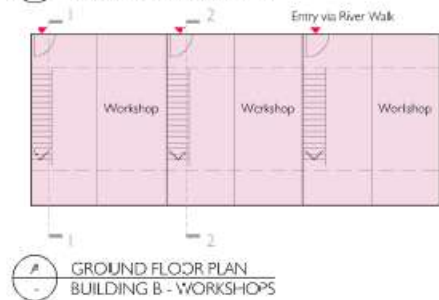
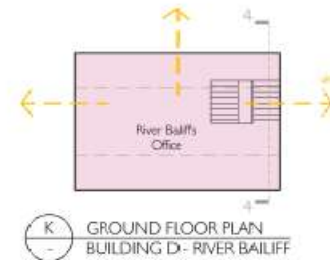
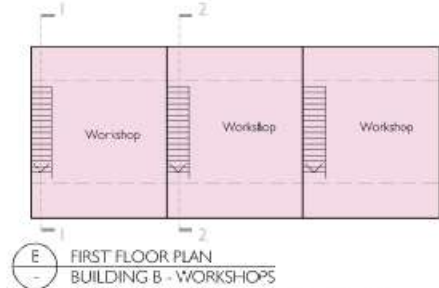
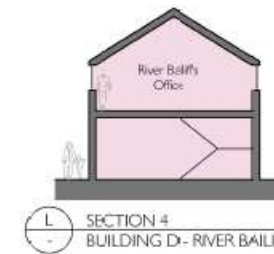
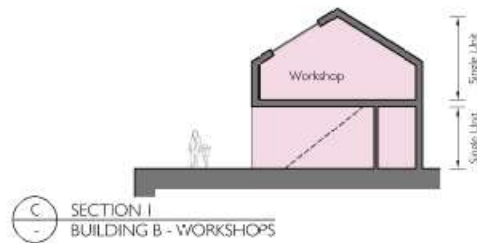
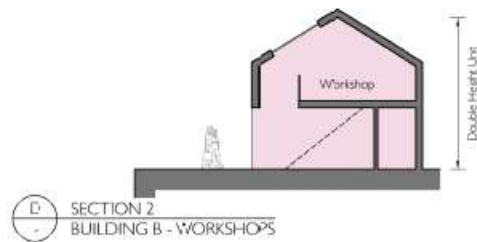
All new building will be clad in black finish board with corrugated metal roofing to complement traditional 'Hythe Sheds'.

- A Cooks Yard - Existing shipwright: barge & Smack repair
- B New Workshops - Two levels with flexible unit sizes
- C New Community Hall/Gig Club  
Lower level - Toilets & showers for visiting craft, open under-croft for parking, occasional craft market & demonstrations; and community events.  
Upper level - Community hall / Gig Clubhouse with toilet facilities
- D River Bailiff's Office  
Lower level - Pa adin & other storage  
Upper level - River Bailiff's office
- E Existing kiosk

— Pedestrian routes

— Views

Figure 15: Ideas for revamping Bailiff's Workshop and Gig Club Building



**CONTACT DETAILS**

Tel: +44 20 7935 4499

Dir: +44 20 7344 6582

[david.geddes@colliers.com](mailto:david.geddes@colliers.com)

Colliers International  
Destination Consulting  
50 George Street  
London W1U 7GA

All information, analysis and recommendations made for clients by Colliers International are made in good faith and represent Colliers International's professional judgement on the basis of information obtained from the client and elsewhere during the course of the assignment. However, since the achievement of recommendations, forecasts and valuations depends on factors outside Colliers International's control, no statement made by Colliers International may be deemed in any circumstances to be a representation, undertaking or warranty, and Colliers International cannot accept any liability should such statements prove to be inaccurate or based on incorrect premises. In particular, and without limiting the generality of the foregoing, any projections, financial and otherwise, in this report are intended only to illustrate particular points of argument and do not constitute forecasts of actual performance.



This page is intentionally left blank

Title	Description / Outputs	
<p>Hythe Quay Improvement Initiative</p>	<p>It has been identified that the Hythe Quay area could be used for commercial activities such as specialist markets.</p> <p>We expect this concept to be developed and tested with Quay users and other stakeholders to understand practical issues this may raise and the viability of the scheme.</p> <p>Identify potential delivery options and solutions to barriers that would need to be resolved.</p>	<p>Hythe Quay is not appropriate for commercial activities such as specialist markets if they require any form of permanent or semi-permanent structures because they would compromise the operation of the maritime-related businesses there, would be out of keeping with the heritage townscape, and be affected by the regular flooding of the quay. A pop-up market with stalls that are put up and taken down on the same day could, in our opinion, be a success, albeit there is little support for the idea amongst stakeholders. Our view is that there is a case for undertaking a trial.</p>
<p>Destination Hub – combined visitor centre and specialist restaurant</p>	<p>There have been suggestions of a combined visitor’s centre which also replaces key infrastructure within the Promenade Park or close to Hythe Quay. Specialist restaurants and a potential marine heritage centre have all been suggested as potential usages for a new facility. It is believed that there are two separate offerings and that there is a need for both. We expect the successful bidder to understand stakeholders’ needs and ambitions, and develop a clear business case on what can be achieved either in 1 or 2 locations.</p> <p>Within the business case we expect information to be provided on likely delivery models to improve the chances of seeking funding.</p> <p>The final project document should also include :-</p> <ul style="list-style-type: none"> <li>• Information on likely uses for the any buildings</li> <li>• Indicative costs related to any buildings</li> <li>• Outline design concepts</li> <li>• Potential commercial income</li> </ul>	<p>Our advice is that a “destination hub” that includes a visitor centre or heritage centre of size would be difficult to fund, would probably require a substantial revenue subsidy and would not be an attraction that would entice a large number of people to the area. An extension to the museum, alongside a wayfinding and interpretation system, is likely to be a better and more sustainable long term approach to telling the story of the area and encouraging visitors to move between the waterfront and the town centre.</p> <p>We advise against endeavouring to establish an exhibition-orientated maritime heritage centre at Hythe Quay for the same reason of lack of sustainability and also because it would have to take space from Cook’s Yard which would be better used for workshops</p>

Title	Description / Outputs	
Visitor Moorings / Pontoon improvements	Explore the potential to improve facilities for visiting yachts / day boats to the Hythe Quay. What facilities would be required, what are the estimated costs of such facilities?	The large tidal range at Hythe Quay, giving a limited window of access to yachts, and reluctance of owners of modern yachts to rest them in mud, means that Hythe Quay / Promenade Park is unlikely to be a significant destination for visiting craft and that there would not be a return on investment in substantially improving facilities for them. The Maldon Harbour Improvement Commissioners have submitted plans for moderate improvement to the current pontoon which seem to be a pragmatic way forward.
St Mary's Church Community Hub	St Mary's Church wish to create a sustainable use for their community facility and wish to explore options to make sensitive improvements to a historic site. We expect the successful bidder to understand stakeholders needs and ambitions, and develop a clear business case on what can be achieved	A project to repair St Mary's Church and make it more flexible so that it can be used more easily for events like musical and theatrical performances, and exhibitions, would be a useful addition to the range of facilities in the area.
Maldon Museum Improvement to accommodation	The Maldon museum is a Council owned facility that is operated by the Maldon Museum. Consider future options for delivery of this service either stand alone or as part of a heritage or visitor centre.	Extending and modernising Maldon District Museum, and employing a curator – manager. Maldon District Council (MDC) should help the museum to take a wider role in conserving and telling the whole Maldon story, including the maritime heritage

Table 1 (Description &amp; Outputs)



# **ANNEXE TO CONSTITUTION**

Part \_\_\_\_

**CODE OF GOOD PRACTICE AND  
GUIDANCE ON THE  
THE CONDUCT OF PLANNING MATTERS**

**Draft June 2017**

CONTENTS

	<u>PAGE</u>
1. Background and Introduction	2
2. Councillors and Officers – Roles, Relationships and Conduct	2
3. Councillors’ Training	4
4. Probity in the Planning Process	4
5. Pre-Discussion and Lobbying	7
6. Planning Decision-Making and Related Processes	10
7. Development Proposals by the Council, Councillors and Officers	13
8. Planning Appeals	13
9. Committee Site Visits	14
10. Planning Obligations	14
11. Administration	15
12. Interpretation	15

## 1 BACKGROUND AND INTRODUCTION

- 1.1 This document sets out the way in which the Maldon District Council (“the Council”) will discharge its planning functions and responsibilities, in particular the determination of planning applications and related matters. In this document, the term “Planning Committees” means the Area Planning Committees and/or the Planning and Licensing Committee. It will also apply to extraordinary meetings of the Council called to deal with defined strategic planning applications.
- 1.2 This document applies to Members and Officers at all times when involved in the planning process. (This includes, where applicable, when part of decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers, the public and consultative meetings). It applies as equally to planning enforcement matters as it does to planning applications.
- 1.3 This Guidance supplements the Members’ Code of Conduct. It is unlikely that there will be any conflict between the two documents but, if there is, the provisions of the Members’ Code of Conduct will take precedence.
- 1.4 One of the key purposes of the planning system is to manage development in the public interest. In performing this role, planning necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings. It is important, therefore, that the local planning authority, both planning officers and the planning committee, make planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable reasons. The process should leave no grounds for suggesting that a decision has been partial, biased or not well founded in any way.
- 1.5 An important reference document is Probity in Planning for Councillors and Officers (April 2013) issued jointly by the Local Government Association and the Planning Advisory Service.

## 2 COUNCILLORS AND OFFICERS – ROLES, RELATIONSHIPS AND CONDUCT

- 2.1 The successful operation of the planning system relies on mutual trust between Members and Officers, and an understanding of each other’s roles. It also relies on each ensuring that they act in a way which is not only fair and impartial but is also clearly seen to be so. Councillors and Officers have different but complementary roles. While both serve the public in different ways, Councillors are elected and therefore have a responsibility towards the electorate. Officers are employed by and therefore responsible to the Council as a whole. It follows that although Officers will advise Councillors, both individually and collectively, they may only take instructions from the Council or a Committee. Officers are responsible for the implementation of decisions of the Council and its Committees.

- 2.2 Both Councillors and Officers are guided by codes of conduct. Councillors have signed up to the Council's own Local Code of Conduct and must have regard to and follow this in all their official actions. Breaches of the Code may result in complaints to the Council's Monitoring Officer who may decide to refer the matter to the Standards Committee. Should a breach of the Code be found, sanctions may be imposed on the Councillor concerned. Breaches of the code may also result in complaints of maladministration to the Local Government Ombudsman.
- 2.3 Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute's (RTPI) Code of Professional Conduct. Breaches of this Code may result in disciplinary action by the Institute. The Council also has in place a Code of Conduct for its staff. In addition to these Codes, its Council and Committee Procedural Rules govern the conduct of Council business, and the Protocol on Member/Officer Relations sets out in greater detail and provides guidance on how the working relationship between Councillors and Officers should operate.
- 2.4 Councillors must not instruct officers to make a particular recommendation nor to take a particular course of action other than through a decision of the Council or one of its committees. Officers must give objective, impartial planning advice, based on their professional judgement and not be compromised or influenced by political considerations. Chartered Town Planners may only advocate their own professional view. Under the Local Government and Housing Act 1989 the Council is able to place restrictions on the outside activities of senior and other designated Officers, particularly in relation to membership of political parties and other Councils.
- 2.5 The Council's Local Development Plan is adopted in the interests of the whole community, following public consultation. It therefore reflects the overall public interest, rather than those of individuals or organisations. Councillors and Officers must support the Council's planning policies and make decisions in accordance with them, unless there are sound planning reasons for not ~~doing~~ so doing.
- 2.6 In dealing with planning applications, Councillors will be acting both as representatives of the people and also as decision makers, objectively considering all relevant issues and deciding upon them. Councillors will justifiably take into account matters of public concern, representations they have received and an assessment of what may or may not be appropriate for the area.
- 2.7 Not all planning decisions are a matter of planning law or policy. Many decisions require an element of judgment, and therefore Councillors need to retain a fair and open-minded approach to the decision making process. So too will Officers in determining applications under delegated powers. In addition, Officers through their professional responsibilities will be involved in the processing of planning applications including negotiating with and

providing assistance to applicants and their agents and also members of the public.

- 2.8 While Councillors may sense a particular responsibility to serve their Ward electors, they have an overriding duty to the people of the Maldon District as a whole. It follows that since planning decisions are being taken on behalf of the Maldon District Council they must be reflective of the interests of the District community as a whole. The decision making process is covered in greater detail in section 6 of this document.

### 3 COUNCILLORS' TRAINING

- 3.1 Planning is a complex area, and planning decisions are open to challenge both on appeal and in the courts. It has long been a constant theme of national advice, that all Councillors regardless of their experience should receive adequate training to assist them in the performance of their duties.

~~3.2~~ By 01.12.17 a All Councillors will be required to have completed an agreed programme of training prior to being able to take part in decision making in planning applications and related matters. Once this training has been completed, it will remain valid for a period of three years, and then refreshed. Any new Councillors who have not undertaken will be required to undertake the agreed training programme will be able to participate in the discussion but not vote on planning applications and related matters before taking part in decision making in planning matters.

~~3.3~~ The training programme in planning will be determined by the Director of Planning & Regulatory Services, in consultation with the Leader and Deputy Leader and the Chairman and Vice-Chairman of Planning & Licensing Committee.

- ~~3.42~~ In addition, all Councillors will be given regular updates to keep them informed of important changes in legislation, procedures or practices, mainly through briefing presentations by Officers at committee meetings. Officers will also arrange training on more specialised planning issues and all members of the Council will be strongly encouraged to attend.

### 4 PROBITY IN THE PLANNING PROCESS

- 4.1 Involvement in the planning process creates considerable potential for conflicts of interest, whether it is through an issue directly affecting a Councillor or an Officer, or indirectly in terms of family, friends or possibly an organisation with which he or she is associated. It is a fundamental principle that decisions should not be made by those who have a pecuniary interest in the outcome. This is vital to avoid public confidence in the planning system being eroded.

- 4.2 The general rule is that a Councillor or Officer should not use his or her position to further a private or personal interest, rather than the general public interest, or give grounds for any suspicion. The key issue is whether a member of the public would reasonably think that they might be influenced by their interest.
- 4.3 Councillors engaged in the determination of planning applications must ensure that they do not use their position improperly to confer on or secure for themselves or any other person, an advantage or disadvantage.

#### Pre-determination/Pre-disposition

- 4.4 Councillors taking planning decisions are required to have an ‘open mind’ and listen to all the evidence before taking a decision. The Localism Act 2011 (S25) provides Members with a degree of assurance should they wish to indicate their views in advance without fear of being regarded as having pre-determined the issue and subsequently excluded from the decision making. To do so may still indicate pre-judgment of the application and expose the Council to the possibility of legal challenge.
- 4.5 The intended effect of the Localism Act provision has still to be determined in the courts, but even if it were held to reduce the prospect of or prevent a legal challenge to the validity of a decision it offers no protection against allegations of maladministration or a breach of the Local Code of Conduct. Members should not make up their minds until they have read the relevant committee reports, heard the evidence and considered the representations, including any public speakers. It is important that Members hear all the evidence and representations prior to reaching a decision.
- 4.6 The concept of pre-determination is different to that of pre-disposition. While carefully wishing to avoid any show of bias of view, it is acceptable for a Member to indicate a view, and -even campaign, on planning issues in a general way. This is relevant where Members of a Planning Committee are also Parish/Town Councillors and where they may wish to contribute to a particular discussion at a more local level. Members must still avoid specific statements on how they will vote on individual planning applications or types of planning application prior to the relevant District Council Planning Committee meeting to avoid any impression of bias and pre-determination. If such statements have been made, they should declare an interest, withdraw from the Chamber and not take part in the debate or vote.
- 4.7 Councillors on a Planning Committee who are also members of Town or Parish Councils may speak and vote at Town or Parish and District levels if they are genuinely willing to listen to the later debate and weigh the considerations material to the later decision.

Interests and the Local Code of Conduct

- 4.8 Membership of another body would constitute a non-pecuniary interest, particularly if it is an organisation whose primary purpose is to lobby to promote or oppose planning proposals. Depending on the degree of involvement there is the prospect of fettering a Councillor's discretion and limiting the ability to participate in the consideration and determination of a planning application.
- 4.9 Members of Planning Committees who are also Parish/Town Councillors should be aware of the potential repercussions of their involvement in the consideration of planning proposals at Parish/Town Council level. They should make it clear at that time that any views they may express, including the exercise of a vote, on the comments to be made to the District Council, can only be based on the information available to the Parish/Town Council at that time.
- 4.10 Members of Planning Committees not affected by an interest through being Parish/Town Councillors are equally advised to take great care about responding to local opinion and publicly declaring a firm view on a proposal at an early stage. It is important that they do not 'fetter their discretion', but rather leave themselves free to reach a view at District Council level, based on all the facts and information.
- 4.11 The Local Code of Conduct sets out requirements and guidance for Councillors, for the registration and declaration of interests. These must be followed scrupulously and Councillors should review the situation regularly. It must be borne in mind that not only should impropriety be avoided but also any appearance, or grounds for suspicion, of improper conduct.
- 4.12 It is for the individual Councillor to decide whether he or she has an interest in any matter considered by a Planning Committee, and if so whether that interest is a pecuniary or non-pecuniary or other one. Councillors with a pecuniary interest must not speak or vote in the decision making process. The Local Code of Conduct explains the effect of interests on participation.
- 4.13 When declaring an interest at a committee meeting this should be done at the relevant point in the meeting or as soon during the consideration of the matter that the interest becomes apparent. Councillors should be clear and specific in identifying the item on the agenda in which they have an interest and, if so, the nature of that interest. Councillors do not need to declare interests that are not covered by the Code of Conduct, e.g. that they know the applicant, agent or an objector, or that they use the premises the subject of the application. If they feel that such an interest is material they should explain the nature and relevance of it.
- 4.14 Officers must declare any personal or financial interest in any planning matter before the Council, must not deal with such matters on behalf of the Council and must not give advice to Councillors or other Officers on them. An Officer with a personal or financial interest in a planning matter must withdraw from

any relevant committee meeting whilst that matter is discussed. Planning Officers must maintain their professional integrity and should avoid becoming associated in the public mind with representatives of the development industry or environmental or other pressure or amenity groups.

#### Gifts and Hospitality

- 4.15 Councillors and Officers should be very cautious about accepting gifts and hospitality and must follow their respective Codes of Conduct.

## **5 PRE-DISCUSSION AND LOBBYING**

- 5.1 This theme is closely linked to issues covered in the previous Probity section. It is inevitable that Councillors will be subject to lobbying, particularly on planning applications. Again, it is emphasised that great care needs to be taken to maintain the integrity of the planning process, the Council, and the Councillor concerned. Lobbying can lead to the impartiality of a Councillor being called into question and could even cause public mistrust of the Council.

#### Lobbying

- 5.2 Lobbying is an attempt to influence Councillors' views in order to achieve a particular decision. It can be by applicants, agents or objectors or by other Councillors. Lobbying may be verbal or by the circulation of letters or documents to all or some Councillors. Planning decisions must be made strictly on the facts and policies relating to each application. Lobbying can, unless care and common sense are exercised by all parties concerned, lead to the impartiality and integrity of a Councillor being called into question.
- 5.3 Notwithstanding the provisions of s.25 of the Localism Act 2011 (as mentioned in 4.2 above) when being lobbied, Councillors, and members of a Planning Committee in particular, should take care about expressing an opinion which may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments. In such circumstances they should restrict themselves to giving procedural advice, including suggesting to those who are lobbying that they should speak or write to the relevant Officer in order that their opinions can be included in the Officer's report to the Committee. If they do express an opinion they should make it clear that they will only be in a position to take a final decision after having received and considered all the relevant evidence and arguments at the Committee meeting.
- 5.4 A Committee member who represents a ward affected by an application is in a difficult position if it is a controversial application around which a lot of lobbying takes place. If a Member responds to lobbying by deciding to go public in support of, or against, a particular outcome it would be very difficult

for that Member to argue convincingly when the Committee takes its decision that he has carefully weighed the evidence and arguments presented at committee. Although not amounting to a disclosable or other pecuniary interest according to the Code of Conduct the proper course of action for such a Member would be to make an open declaration not to vote. However, this is a severe restriction on the Member's wish - duty, even – to represent the views of the electorate. Councillors should therefore generally avoid organising support for or opposition to a planning application and avoid lobbying other Councillors. Such actions can easily be misunderstood by parties to the application and by the public.

- 5.5 Councillors should not excessively lobby fellow Councillors regarding their concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.
- 5.6 Individual Councillors should avoid visiting application sites upon the request of applicants or objectors as this may result in those parties attempting to unduly influence the views of Councillors and give the impression of bias. ~~may often be asked by both applicants and objectors to visit application sites. Such visits may be valuable in gaining an understanding of the implications of proposals.~~ It is important however that the parties are clear in the understanding that the reason for Councillors' involvement in this way is purely to gather information. Where this occurs, Councillors should advise the Director of Planning and Regulatory Services Planning Director and make known their involvement at the relevant Committee meeting at which the application is considered. An approved protocol for site visits organised by a Planning Committee is at Appendix 1.

#### Pre-application discussion

- 5.7 It is likely that in certain cases discussions will take place between potential applicants and Officers prior to the submission of a planning application. Such discussions may be beneficial in terms of applications being prepared for submission which can then proceed without undue delay to determination. Potential appeals may be avoided by good communication at an early stage of the process. Advice given should be consistent and based on the development plan and material considerations. An approved protocol for Pre-Application Discussions is at Appendix 2.
- 5.8 If Councillors receive information that is relevant to a prospective planning decision they must declare that information to the relevant planning officers and to the committee. Discussions with applicants, agents or objectors should be reported and any correspondence made available to officers before the committee meeting. Where information has been provided to Councillors or Officers on a confidential basis, it shall not be disclosed to third parties.
- 5.9 Where Councillors are acting as agents for people pursuing a planning matter with the Council or submitting planning applications on behalf of their

employers as part of their job, they should make it clear to their clients that they cannot and will not use their position as a Councillor to influence the outcome of an application.

- 5.10 Councillors should not meet applicants or agents or third parties in connection with a current ~~or proposed~~ application. If Councillors do agree to meet they should only do so in the presence of a planning officer. ~~In exceptional circumstances, where it is not possible to arrange a meeting in the presence of a planning officer without causing undue delay, Councillors should notify the relevant planning officer of the proposed meeting beforehand and the notification recorded in the application file.~~ Councillors should listen and may ask questions but should not comment nor seek to negotiate. They must make clear that any views they express are personal, rather than those of the Council. A note should be taken of the meeting and placed on the application file. The fact that a Councillor has discussed any proposal with the applicant, agent, supporters or objectors must be made clear when the application is before the Committee for determination.

#### Planning Enforcement

- 5.11 Councillors may also become involved in matters that are the subject of a complaint or investigation, and on which enforcement or other legal action may be under consideration. In these circumstances, Councillors are strongly advised to ensure that any action on their part does not prejudice the Council's position, that any enquiries on specific issues are restricted to matters of fact or general case progress, and acknowledge that enforcement cases will be dealt with in accordance with the Council's Planning Enforcement Policy (see Appendix 3).

#### Contact with Application Case Officer

- 5.12 Councillors will often need to contact the Planning Case Officer on development proposals. Contact should however be limited to requests for factual information and the seeking of advice on progress and the nature of consultation responses received. While Councillors are encouraged to discuss their concerns with Officers, they must should not attempt to influence or pressure Officers in the making of particular recommendations. If a Councillor is unhappy with the way in which a case is progressing, the matter should be discussed with a senior officer of at least Team Leader level.
- 5.13 Officers should remain free of any outside influence to make recommendations on planning matters based on their own professional judgements and having regard to all material and other considerations. Councillors should not put improper pressure on Officers for a particular recommendation and, as required by the Code of Conduct, should not do anything which compromises, or is likely to compromise, their impartiality.

#### Availability and Veracity of Information

- 5.14 Planning applications must be determined on the basis of the documents and information formally submitted. Any submissions from applicants' agents or objectors which are formally received by the Council can properly be taken into account in making a decision. It can cause problems if Councillors are given information or assurances by applicants which are not part of the formal application and which are not, therefore, enforceable. Problems can also arise if Councillors are given information by objectors which may be misleading, untrue or irrelevant. It can be problematical if officers are unaware of submissions by applicants and objectors and are therefore unable to consider them and advise the Committee about their relevance or enforceability. Councillors should forward such information to the officers for consideration prior to the Committee meeting.

## 6 PLANNING DECISION MAKING AND RELATED PROCESSES

### Committee Decisions

- 6.1 All planning applications to be determined by a Committee will be the subject of comprehensive, written reports from Officers. These reports will describe the site and the proposal, relevant planning history, development plan policies and other material considerations including, where appropriate, national or local guidance, and also representations made by statutory consultees, local residents and other interested parties. They will also contain an assessment of the proposal against those considerations and a reasoned recommendation. Reports will contain all the relevant material known at the time when produced and published as part of the Agenda for a particular meeting. Councillors should endeavour to obtain factual information from officers prior to the meeting. This can assist in reducing delays which may be caused by deferment to obtain further information.
- 6.2 Sometimes applicants and objectors write directly to Committee Members, after the report has been published, commenting on the report or providing further material. If Planning Services have not been copied into the correspondence, Committee Members should forward any correspondence to the Case Officer as soon as possible.
- 6.3 Any information material to the decision-making process that is received subsequent to the publication of the Committee Agenda and no later than noon on the last working day prior to the meeting will be reported to the Committee at its meeting. At the meeting, the Planning Officer will advise if the late material raises any matters which should be taken into account by the Committee. The Officer report and last-minute papers should be read and plans/photographs seen before decisions are made. Councillors will also have

an opportunity to put questions to Officers and hear the views of their fellow Councillors, the Applicants and other third parties during the course of the debate.

- 6.4 The law requires that where the Development Plan is relevant to a decision, then that decisions should be taken in accordance with it, unless material considerations indicate otherwise (s54A, Town and Country Planning Act, 1990). The Development Plan is therefore the starting point of the decision making process. Proposals having been identified as amounting to a departure from the Development Plan need to be advertised as such. An Officer recommendation to approve contrary to the Development Plan would need to be justified in the most careful terms, and if the Committee is mindful to approve then the application may then need to be referred to the Secretary of State.
- 6.5 Planning decisions will not always be dictated by planning law or policy. They will sometimes be matters of fine judgment where the balancing of considerations may be difficult. The Officer's report and recommendation will be founded on adopted planning policy and guidance. Planning Committee Members should take care, if expressing any opinion on the planning applications before them, that they confine their comments to matters which are material planning considerations. Regardless of any political group discussion prior to the Committee meeting, Committee Members must consider applications on their merits and not simply feel bound by decisions made at group meetings. Committee Members cannot be "whipped" to vote in a particular way; this advice is supported by the Local Government Ombudsman. Any decisions taken in this way may be viewed as maladministration and could be subject to legal challenge.
- 6.6 Where Councillors disagree with the Officer recommendation, a proposition can be made to overturn that recommendation. The Committee remains bound by law to make decisions in accordance with the Development Plan and all other material planning considerations. It will therefore need to demonstrate that this requirement has been met in its deliberations, making clear what material considerations are leading it to a decision contrary to professional advice. Failure to do so could result in an appeal against the decision, with potential for an award of costs against the Council in the event that unreasonable behavior on its part is found. It could also render a decision subject to legal challenge (judicial review).
- 6.7 A proposition contrary to an Officer recommendation, together with the reasoning behind it, needs to be clearly presented and will be recorded in the Minutes. It must then be seconded. Before any debate, the Chairman shall afford the Officers an opportunity to respond to the proposition by way of advice on the implications in terms of risk. Depending on the circumstances and complexity of the case it may be that Officers will need to consider those implications in greater detail and report back. Any proposal for deferment must be disposed of ahead of any conclusion being reached on the decision itself. The Chairman will summarise, or cause to be summarised, the salient

points of the debate and will seek to ensure the terms of the proposition are clearly understood before putting the matter to the vote.

- 6.8 Whilst the Committee must clearly set out the reasons for its decisions contrary to Officer recommendation, the final drafting of conditions and reasons will normally be carried out by Officers. Reasons for refusal must be clear, unambiguous and justified by the evidence of the case. Conditions attached to permissions should be necessary, relevant to planning and the proposed development, enforceable, precise and reasonable in all other respects. The text of non-standard conditions and reasons will be determined by the Director of Planning and Regulatory Services in consultation with the Committee Chairman (or Vice Chairman in his/her absence) following the meeting. The same mechanism will be used for the updating of any [planning conditions agreed by a Committee which may be](#) required through the passage of time between [the a](#)-Committee decision and the issue of a decision notice consequent upon completion of a S106 agreement/planning obligation.
- 6.9 During Committee Meetings, everything said may be scrutinised by Applicants, objectors, legal advisers and the Press, so Councillors and Officers should be circumspect. Councillors who serve on a Planning Committee should ensure they do not speak to members of the public, or pass or accept notes from them, during the course of a meeting. Councillors who leave the room during the Meeting should avoid speaking to any Applicants or objectors/supporters who may be waiting outside the room. Councillors who leave the room during debate or whilst an application is before the Committee will not take part in the debate or vote on that application.
- 6.10 Given the nature of the decisions to be taken, it is vital that [the](#) means by which decisions are reached are clear and understood by everyone present. The role of the Chairman is therefore important. Although the Council's Procedure Rules allow decisions to be reached through general assent of the Councillors present at a meeting, best practice with regard to decisions on Planning Applications suggests that a show of hands is far preferable.

#### Decisions delegated to Officers

- 6.11 Not all decisions on planning applications and related matters will be taken by a Committee. The Council has agreed, and will keep under review, a Scheme of Delegation (alongside the Terms of Reference of Committees) which enables decisions to be taken by responsible Officers. Decisions taken under delegated powers will be subject to the same process and analysis of the facts and all material considerations, as if they were referred to a Committee for determination. A statement to support each delegated decision will be produced and placed on the case file as a matter of record and also for the benefit of interested Councillors and the public.
- 6.12 Officers take instructions from Councillors only through a decision of the Council or one of its Committees. In the exercise of delegated powers, Officers may in certain cases be required to consult with individual Councillors, and take the views of those individual Councillors into

consideration. Officers must always act impartially and advise the Council according to their own professional opinion.

### Deferments

- 6.13 A decision on an application should not be deferred without proper justification. For example, the justification might be to ensure that all the proper information is to hand and this might include a site visit. The reason for requesting a deferment must be clearly set out by the proposer and recorded in the Minutes.

### Public Attendance at Committee Meetings

- 6.14 All planning applications referred to a Committee for determination will be considered in public session and all background information will be made available for public inspection upon publication of the agenda papers, unless there are specific reasons for not disclosing or publishing 'exempt information' in accordance with the Local Government Act 1972. Applicants, agents and members of the public, representatives of Parish/Town Councils may speak on planning applications being considered at the meeting. The Council's public participation scheme is at Appendix 5.

## **7 DEVELOPMENT PROPOSALS BY THE COUNCIL, COUNCILLORS AND OFFICERS**

- 7.1 Committee Terms of Reference provide for the determination of planning applications for the District Council's own development or affecting Council land and applications submitted by Council Members or Officers, by a Planning Committee rather than under delegated powers.
- 7.2 Such applications will be ~~processed and handled~~<sup>treated</sup> no differently to any other application and the requirements of the Town and Country Planning legislation and ministerial guidance will be followed in the usual way. Officer recommendations and Committee decisions will be made strictly on planning merits without regard to any financial or other gain which might accrue to the Council if the development is permitted, or to other issues which may need more properly to be considered by another Committee of the Council. It is important that the Council not only treats, but is seen to treat such applications the same as any other.
- 7.3 Councillors or Officers proposing to submit a planning application should notify the Monitoring Officer. If a Councillor or Officer submits a planning application, they should take no part in its processing by the authority at any point. It is important that neither Councillors nor Officers take any part in the preparation of Local Development Plan policy or supplementary planning guidance they may influence, or be seen as influencing, with a view to future planning proposals they may wish to submit.

## 8 PLANNING APPEALS

- 8.1 A Planning Appeals Protocol has been approved and is at Appendix 6. In the event of a decision taken to refuse contrary to the recommendation of the Director of Planning and Regulatory Services, the Committee may nominate a Member to assist in agreeing the precise reasons for refusal and with the preparation and presentation of the Council's case should the decision be appealed.
- 8.2 As referred to earlier, Officers must always act impartially and advise the Council of their professional opinion. Chartered Town Planners are obliged to follow the Royal Town Planning Institute's Code of Professional Conduct. Whilst Chartered Town Planners appearing as the Council's expert witnesses at planning inquiries and hearings have a duty to set out the Council's case, they must, if asked, give their own professional view in accordance with that Code.
- 8.3 The Council is at risk of an award of costs against it if the Planning Inspector finds that there has been unreasonable behaviour. Common examples of unreasonable behaviour are failure to comply with procedural requirements for inquiries or hearings, failure to provide planning evidence to support reasons for refusal, and failure to take into account relevant policy statements in departmental guidance.

## 9 COMMITTEE SITE VISITS

- 9.1 [Committee S](#)site visits can cause delay and additional costs and should only be used when the expected benefit is substantial. A site visit is only likely to be necessary if the impact of the proposed development is difficult to assess from the plans and any supporting material, including any photographs taken by Officers. [Site visits may be arranged following publication of the agenda but before the actual meeting. Where requested at the actual meeting, t](#)The reason ~~for requesting a site visit~~ must be clearly set out by the proposer and recorded in the Minutes. All site visits must be carried out in accordance with the Council's agreed guidelines set out in Appendix 1 to this document.
- 9.2 Site visits are not part of the formal committee proceedings and are not a forum for debate or making planning decisions. Site visits are not open to the public and should not be used to canvass local opinions or as an opportunity for lobbying or advocacy. Councillors should not express personal opinions during site visits.

## 10 PLANNING OBLIGATIONS

- 10.1 Under section 106 of the Town and Country Planning Act 1990, the Council as local planning authority may seek planning obligations in connection with grant of planning permission. Planning Obligations may be given by way of unilateral undertaking or agreement, and for the most part will regulate the use

or development of land as distinct from the controls that may be available through the imposition of planning conditions. In addition, they may be used to secure off-site improvements or financial contributions towards local infrastructure provision.

- 10.2 To avoid any public mistrust or suspicion, it is important that arrangements in connection with planning obligations are operated in accordance with the principle that planning permission may not be bought or sold. The Council must conduct any negotiations and arrangements in a way which is seen to be fair, open and reasonable.
- 10.3 If a planning obligation is created in isolation or before a planning application is determined, a copy will be placed as required in Part 1 of the statutory Planning Register and therefore made available for public inspection. Similarly, if a planning obligation is created following determination of an application, a copy will be placed in Part 2 of the Register.

## 11 ADMINISTRATION

### Monitoring of Decisions

- 11.1 The Council should monitor planning decisions taken, on an annual basis, both in terms of quality and consistency. Annually, Councillors will visit a sample of implemented planning permissions to assess the quality of the decisions. The committee should formally consider the annual report and decide whether it gives rise to the need to review any policies or practices. The review may include information identifying the number of cases where Officers' recommendations were not accepted and the outcome of any related appeal decisions. The results of the monitoring will be reported to Councillors along with any recommendations to improve quality, consistency or performance.

### Records management

- 11.2 The planning application files should be complete and accurate containing sufficient information and a record of events so that the decision and the process leading to it can be easily understood. Only "background papers" as defined in the Local Government Act 1972 (and listed in committee reports) are automatically available to the public. These would include, in addition to the application document, associated letters and supporting information, replies from consultees and letters from supporters and objectors. The same principles apply to applications determined under Officers' delegated powers. Such decisions should be as well documented and recorded in the same way as

those taken by Committees. These principles apply equally to enforcement and development plan and associated policy matters.

Complaints

- 11.3 Any complaints received about the way in which a planning application or other planning matter has been dealt with in terms of procedures or fairness will be investigated under the Council's complaints procedures. The fact that someone may disagree with the decision the Council has reached is not a complaint which will normally necessitate investigation, although Officers will explain the reasons for the Council's decision in such a case.

**12 INTERPRETATION**

- 12.1 The Chief Executive, Legal and Democratic Services Manager and Director of Planning and Regulatory Services, as appropriate, will provide advice or clarification on any matters of a planning nature contained within this document or otherwise. Issues of probity or otherwise requiring interpretation should be referred to the Monitoring Officer.

-----

DRAFT

This page is intentionally left blank