

# Unrestricted Document Pack

APOLOGIES Committee Services  
Tel. 01621 875791

Council Chamber 01621 859677

**HEAD OF PAID SERVICE'S OFFICE**  
Head of Paid Service  
Richard Holmes

27 July 2018

Dear Councillor

You are summoned to attend the meeting of the;

## **NORTH WESTERN AREA PLANNING COMMITTEE**

on **MONDAY 6 AUGUST 2018 at 7.30 pm.**

in the Council Chamber. Maldon District Council Offices, Princes Road, Maldon.

A copy of the agenda is attached.

Yours faithfully



Head of Paid Service

### COMMITTEE MEMBERSHIP

### CHAIRMAN

Councillor Mrs M E Thompson

### VICE-CHAIRMAN

Councillor E L Bamford

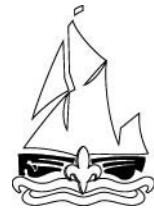
### COUNCILLORS

J P F Archer  
H M Bass  
M F L Durham, CC  
J V Keyes  
D M Sismey  
A K M St. Joseph  
Miss S White

*Ex-officio non-voting Members:* Councillor Mrs P A Channer, CC

Please note: Limited hard copies of this agenda and its related papers will be available at the meeting. Electronic copies are available via the Council's website.

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## AGENDA

### **NORTH WESTERN AREA PLANNING COMMITTEE**

**MONDAY 6 AUGUST 2018**

1. **Chairman's notices (please see overleaf)**

2. **Apologies for Absence**

3. **Minutes of the last meeting** (Pages 9 - 16)

To confirm the Minutes of the meeting of the Committee held on 09 July 2018 (copy enclosed).

4. **Disclosure of Interest**

To disclose the existence and nature of any Disclosable Pecuniary Interests, other Pecuniary Interests or Non-Pecuniary Interests relating to items of business on the agenda having regard to paragraphs 6-8 inclusive of the Code of Conduct for Members.

(Members are reminded that they are also required to disclose any such interests as soon as they become aware should the need arise throughout the meeting).

5. **RES/MAL/16/01475 - The Summer House, Back Lane, Wickham Bishops** (Pages 17 - 68)

To consider the planning application and recommendations of the Director of Planning and Regulatory Services, (copy enclosed, Members' Update to be circulated)\*.

6. **HOUSE/MAL/18/00758 - Old Times Cottage, Mill Lane, Tolleshunt Major** (Pages 69 - 76)

To consider the planning application and recommendations of the Director of Planning and Regulatory Services, (copy enclosed, Members' Update to be circulated)\*.

7. **DET/MAL/18/00674 - Observation Tower, Mell Road, Tollesbury** (Pages 77 - 90)

To consider the planning application and recommendations of the Director of Planning and Regulatory Services, (copy enclosed, Members' Update to be circulated)\*.

8. **DET/MAL/18/05091 - Land West of Fambridge Road, North Fambridge** (Pages 91 - 128)

To consider the planning application and recommendations of the Director of Planning and Regulatory Services, (copy enclosed, Members' Update to be circulated)\*.

9. **DET/MAL/18/05080 - Manor Farm, The Avenue, North Fambridge** (Pages 129 - 138)

To consider the planning application and recommendations of the Director of Planning and Regulatory Services, (copy enclosed, Members' Update to be circulated)\*.

10. **DET/MAL/18/05092 - Manor Farm, The Avenue, North Fambridge** (Pages 139 - 162)

To consider the planning application and recommendations of the Director of Planning and Regulatory Services, (copy enclosed, Members' Update to be circulated)\*.

11. **Any other items of business that the Chairman of the Committee decides are urgent**

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**Reports for noting:**

In accordance with the recent Council decision (Minute No. 542 refers), the following report is for noting and a copy has been placed in the Members' Room and on the I drive for Members' information.

- Other Area Planning and Related Matters – Appeals Lodged and Appeal Decisions

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**Note:**

1. The Council operates a facility for public speaking. This will operate only in relation to the consideration and determination of planning applications under Agenda Items No. 5 – 10.
2. The Committee may hear from one objector, one supporter, a Parish / Town Council representative, and the applicant / agent. Please note that the opportunity to speak is afforded only to those having previous made previous written representation.
3. Anyone wishing to speak must notify the Committee Clerk or a Planning Officer between 7pm and 7.20pm prior to the start of the meeting.
4. For further information please ring 01621 875791 or 876232 or see the Council's website – [www.maldon.gov.uk/committees](http://www.maldon.gov.uk/committees)

\* Please note the list of related Background Papers attached to this agenda.

## **NOTICES**

### **Sound Recording of Meeting**

Please note that the Council will be recording any part of this meeting held in open session for subsequent publication on the Council's website. At the start of the meeting an announcement will be made about the sound recording. Members of the public attending the meeting with a view to speaking are deemed to be giving permission to be included in the recording.

### **Fire**

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### **Health and Safety**

Please be advised of the different levels of flooring within the Council Chamber. There are steps behind the main horseshoe as well as to the side of the room.

### **Closed-Circuit Television (CCTV)**

Meetings held in the Council Chamber are being monitored and recorded by CCTV.

## **BACKGROUND PAPERS**

The Background Papers listed below have been relied upon in the preparation of this report:

1. The current planning applications under consideration and related correspondence.
2. All third party representations and consultation replies received.
3. The following Statutory Plans and Supplementary Planning Guidance, together with relevant Government legislation, Circulars, Advice, Orders, Directions and Guidance:

### **Development Plans**

- Maldon District Local Development Plan approved by the Secretary of State 21 July 2017
- Burnham-On-Crouch Neighbourhood Development Plan (2017)\*

\* Note the referendum was held on 20 July 2017 and was in favour of the Plan, but the Plan will be made by Maldon District Council in September 2017. In the meantime it is treated as being in effect.

### **Legislation**

- The Town and Country Planning Act 1990 (as amended)
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Planning (Hazardous Substances) Act 1990
- The Planning and Compensation Act 1991 and The Planning and Compulsory Purchase Act 2004 (as amended)
- The Planning Act 2008
- The Town and Country Planning (General Permitted Development) Order 1995 (as amended)
- The Town and Country Planning (Development Management Procedure) (England) Order 2010
- The Town and Country Planning (Use Classes) Order 1987 (as amended)
- The Town and Country Planning (Control of Advertisements) (England) Regs 2007
- The Town and Country Planning (Environmental Impact Assessment) Regs 2011
- Localism Act 2011
- The Neighbourhood Planning (General) Regulations 2012
- The Town and Country Planning (Local Planning) (England) Regulations 2012
- Growth and Infrastructure Act 2013
- Housing and Planning Act 2016
- Neighbourhood Planning Act 2017

## **Supplementary Planning Guidance and Other Advice**

- i) Government policy and guidance
  - National Planning Policy Framework (NPPF) and Technical Guidance
  - Planning Practice Guidance (PPG)
  - Planning policy for traveller sites
  - Relevant government circulars
  - Relevant Ministerial Statements (as referred to in the Report)
- ii) Essex County Council
  - Essex Design Guide 1997
  - Essex and Southend on Sea Replacement Waste Local Plan
- iii) Maldon District Council
  - Five Year Housing Land Supply Statement 2015 / 16
  - Planning Policy Advice Note (version 4) - October 2015
  - Planning Policy Advice Note (version 5) - May 2016
  - Infrastructure Delivery Plan (All versions, including update in Council's Hearing Statement)
  - Infrastructure Phasing Plan (January 2015 and January 2017 update for Examination)
  - North Heybridge Garden Suburb Strategic Masterplan Framework - 2014
  - South Maldon Garden Suburb Strategic Masterplan Framework - 2014
  - Vehicle Parking Standards Supplementary Planning Document (SPD) - July 2006
  - Accessibility to Buildings SPD – December 2006
  - Children's Play Spaces SPD – March 2006
  - Sadd's Wharf SPD – September 2007
  - Heybridge Basin Timber Yard SPD – February 2007
  - Developer Contributions Guide - 2010
  - Affordable Housing Guide – June 2006
  - Heybridge Basin Village Design Statement – November 2006
  - Wickham Bishops Village Design Statement – 2010
  - Woodham Walter Village Design Statement – 2017
  - Various Conservation Area Appraisals

Copies of all Background Papers are available for inspection at the Maldon District Council Offices, Princes Road, Maldon, Essex CM9 5DL during normal office hours.

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**MINUTES of  
NORTH WESTERN AREA PLANNING COMMITTEE  
9 JULY 2018**

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**PRESENT**

Chairman	Councillor Mrs M E Thompson
Vice-Chairman	Councillor E L Bamford
Councillors	J P F Archer, H M Bass, J V Keyes, D M Sismey, A K M St. Joseph, Miss S White and Mrs P A Channer, CC
Ex-Officio Non-Voting Member	Mrs P A Channer, CC

**238. CHAIRMAN'S NOTICES**

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

**239. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillor M F L Durham, CC.

**240. MINUTES OF THE LAST MEETING**

**RESOLVED** that the Minutes of the meeting of the Committee held on 11 June 2018 be approved and confirmed.

**241. DISCLOSURE OF INTEREST**

Councillor J V Keyes disclosed a non-pecuniary interest in all items as he sits on Great Totham Parish Council.

Councillor A K M St. Joseph declared a non-pecuniary interest in Agenda Item 8, HOUSE/MAL/18/00686 – 3 Root Lane, Wickham Bishops, as the agent had previously prepared architectural drawings for him.

Councillor H M Bass declared a non-pecuniary interest in Agenda Item 5, FUL/MAL/18/00436 – Land at Benton Manor, Wickham Hall Lane, Wickham Bishops, Essex, and Agenda Item 8, HOUSE/MAL/18/00686 – 3 Root Lane, Wickham Bishops as he knows the applicants.

Councillor Mrs P A Channer, CC, declared a non-pecuniary interest as a Member of Essex County Council, a consultee on planning application matters with respect generally to highways, matters of access and education primarily.

**242. FULMAL1800436 - LAND AT BENTON MANOR, WICKHAM HALL LANE, WICKHAM BISHOPS, ESSEX**

<b>Application Number</b>	<b>FUL/MAL/18/00436</b>
<b>Location</b>	Land at Benton Manor, Wickham Hall Lane Wickham Bishops Essex
<b>Proposal</b>	Change of use of disused agricultural land to residential use marked area 'A' and Change of use of disused agricultural land to residential use marked area 'B'. The proposal includes an access gate and hardstanding on land marked area B.
<b>Applicant</b>	Mr Mark Sherriff
<b>Agent</b>	Mr Mike Smith - Metcalfe Briggs Surveyors
<b>Target Decision Date</b>	18.07.2018
<b>Case Officer</b>	Yee Cheung
<b>Parish</b>	Wickham Bishops
<b>Reason for Referral to the Committee / Council</b>	The planning application has been called in by Councillor Bass on the grounds of public interest

The Officer presented the report to the Committee, and drew attention to the Members' Update detailing the response from Wickham Bishops Parish Council and the Coast and Countryside Officer. The photographs mentioned in the Members' Update were presented to the Committee in addition to the Officers report.

The Committee discussed whether the change of use was relevant and, following a request from Members, the Development Management Team Leader clarified the differentiation between both amenity and residential land.

Members considered that although the boarding at the back of the gate was not aesthetically pleasing, and would have preferred hedgerows to the fence, it was agreed that it was logical for the gate to be set back from the road to allow for access.

Councillor H M Bass proposed that the application be approved contrary to the Officer's recommendation; this was duly seconded and agreed.

**RESOLVED** that the application be **APPROVED**, subject to the following conditions:

1. The development hereby permitted shall begin no later than three years from the date of this decision.  
REASON: To comply with Section 91(1) of The Town & Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development shall be carried out in accordance with the plans listed above.  
REASON: To ensure that the development is carried out in accordance with the details as approved.
3. The permission hereby granted does not include the approval of the gate and fencing that has been installed at the Wickham Hall Lane frontage of the site. Prior to the change of use of land hereby approved, details of and means of enclosure to this frontage of the site (including any proposed gate, fencing and replacement soft landscaping) and a timetable for the implementation of those works shall be submitted to and approved in writing by the Local Planning Authority. The works and any approved soft landscaping shall subsequently be provided / installed in accordance with the approved timetable. If within a period of five years from the date of the planting of any tree or plant, or any tree or plant planted in its replacement, is removed, uprooted, destroyed, dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted in the same place, unless the local planning authority gives its written consent to any variation.  
REASON: To protect and minimise the visual impact on the character of the countryside in accordance with policies S1, S8, D1 and H4 of the Maldon District Local Development Plan and the National Planning Policy Framework.
4. Notwithstanding the provisions of Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking or re-enacting that Order) no wall, fence, gate or other means of enclosure shall be erected within or around the site without the prior grant of planning permission by the local planning authority.  
REASON: To protect and minimise the visual impact on the character of the countryside in accordance with policies S1, S8, D1 and H4 of the Maldon District Local Development Plan and the National Planning Policy Framework.
5. The use of the land hereby permitted shall be used only for purposes incidental to the residential enjoyment of the dwelling to which this permission relates. Notwithstanding the provisions of Classes E and F of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking or re-enacting that Order) no buildings, swimming pools, or other structures shall be constructed nor any hardstanding be laid on the extended garden area without express planning permission having been obtained from the local planning authority.  
REASON: To protect and minimise the visual impact on the character of the countryside in accordance with policies S1, S8, D1 and H4 of the Maldon District Local Development Plan and the National Planning Policy Framework.

**243. RESMAL1800558 - MANOR FARM, THE AVENUE, NORTH FAMBRIDGE, ESSEX, CM3 6LZ**

<b>Application Number</b>	<b>RES/MAL/18/00558</b>
<b>Location</b>	Manor Farm The Avenue North Fambridge Essex CM3 6LZ
<b>Proposal</b>	Reserved matters application for the approval of access, appearance, landscaping, layout and scale on approved planning application <b>OUT/MAL/14/01018</b> (Outline planning application for up to 30 dwellings)
<b>Applicant</b>	David Wilson Homes
<b>Agent</b>	N/A
<b>Target Decision Date</b>	3 August 2018
<b>Case Officer</b>	Yee Cheung
<b>Parish</b>	North Fambridge
<b>Reason for Referral to the Committee / Council</b>	Member Call In by Cllr White

The Committee received the Officers report and noted that the Members' Update confirmed that no objection had been received from the Environment Agency.

Following the Officer's presentation, Mr Sean Martin from David Wilson Homes, the Agent, addressed the Committee.

Members queried whether the application was in keeping with the Strategic Housing Market Assessment (SHMA). It was noted that although there was a shortfall on the housing split, the Group Manager for Planning Service confirmed that this would not be a reasonable ground for refusal as 2% did not equate to one unit.

The Development Management Team Leader confirmed for the Committee that although there was a 3.5 metre shortfall in the recommended distance of back to back dwellings, as set out in the Essex Design Guide (EDG), this was mitigated due to the substantial length of the back gardens of neighbouring properties. As there was no loss of light, outlook, or privacy this would not be considered grounds for refusal.

Councillor Miss S White proposed that the application be refused contrary to the Officers recommendation, and this was duly seconded. Following a vote, the motion was not carried

The Chairman then put the officer's recommendation to a vote and the motion was carried.

**RESOLVED** that the application be **APPROVED**, subject to the following conditions:

- 1 The development hereby permitted shall be carried out in complete accordance with the approved drawings specifically referenced on this decision notice.  
REASON: To ensure that the development is carried out in accordance with the details as approved.

2 The development shall be constructed shall be constructed of the external materials specified on Materials Plan Drawing No: 746. 204.07 dated 27.04.2018 and the External Works Plan Drawing No: 746.231.07 dated 05.06.2018.  
 REASON: To ensure that the external materials used for the construction of the development is appropriate to its site and surroundings in accordance with Policy D1 of the Maldon District LDP and Government advice contained in the NPPF.

3 The hard landscaping for the site shall be constructed in complete accordance with materials specified on External Works Plan Drawing No: 746.231.07 dated 05.06.2018 and retained as such thereafter.  
 REASON: To ensure that the external materials used for the construction of the development is appropriate to its site and surroundings in accordance with Policy D1 of the Maldon District LDP and Government advice contained in the NPPF.

4 The tree protection and soft landscaping for the site shall be carried out in complete accordance with the following details and Drawing No:-

- JBA 17/004-SK01 Revision F - Landscape Proposal for PLOTS and POS dated 23.05.2018
- JBA 17/004-SK02 Revision F - Landscape Proposal for PLOTS and POS dated 23.05.2018
- Measured Works Schedule Revision B dated 15.05.2018 prepared by James Blake Associates Ltd
- Landscape Management and Maintenance Plan (JBA 17/004 Rev B dated 15.05.2018) prepared by James Blake Associates Ltd
- Arboricultural Method Statement (JBA 17/004 AR02 Rev D dated 4 May 2018) prepared by James Blake Associates Ltd
- Landscape Programming (JBA 17/004-01 Revision G dated 27.04.2018) prepared by James Blake Associates Ltd
- Landscape Programming (JBA 17/004-02 Revision G dated 27.04.2018) prepared by James Blake Associates Ltd
- Tree Protection Plan (JBA 17/004-02 TP01 Revision C dated 26.04.2018) prepared by James Blake Associates Ltd

REASON: To ensure the landscaping is appropriate and to protect the visual amenity of the area in accordance with Policy D1 of the Maldon District LDP and Government advice contained in the NPPF.

5 Prior to the first occupation of the development the initial footway access into the site should provide a lowered kerb for pedestrians to access the proposed shared surface. The current footway access into the site does not appear to adjoin to the shared surface and therefore should be extended into the site to ensure a safe and suitable pedestrian route is provided.  
 REASON: To provide a safe and accessible entrance into the site for pedestrians.in accordance with Policy T2 of the Maldon District LDP and Government advice contained in the NPPF.

6 Prior to the first occupation of the development the vehicle parking and turning areas as indicated on the approved plans shall be provided, hard surfaced, sealed and marked out. The parking and turning areas shall be retained in perpetuity for their intended purpose.

REASON To ensure that appropriate parking and turning is provided in accordance with Policy T2 of the Maldon District LDP and Government advice contained in the NPPF.

7 Notwithstanding the provisions of Article 3 of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking or re-enacting that Order) no dormer window or other form of addition or opening shall be constructed on the roof on the rear elevation of Plots 2, 3, 4, 5, 6, 14, 15, 16, 17, 18 the dwellings hereby permitted without planning permission having been obtained from the local planning authority.

REASON: To protect the residential amenity of existing properties fronting Brabant Road in accordance with Policy D1 of the Maldon District LDP and Government advice contained in the NPPF.

**244. FULMAL1800597 - HONEYWOOD FARM, HONEYPOD LANE, PURLEIGH, CM3 6RT**

<b>Application Number</b>	<b>FUL/MAL/18/00597</b>
<b>Location</b>	Honeywood Farm, Honeypot Lane, Purleigh, CM3 6RT
<b>Proposal</b>	Replacement dwelling
<b>Applicant</b>	Mr. & Mrs. Brown
<b>Agent</b>	Mr. Peter Le Grys – Stanfords
<b>Target Decision Date</b>	<b>16 July 2018</b>
<b>Case Officer</b>	Hilary Baldwin
<b>Parish</b>	<b>COLD NORTON</b>
<b>Reason for Referral to the Committee / Council</b>	Member Call In – Councillor Mrs Sue White- Public Interest

Following the Officer's presentation, Mr Peter Le Grys, the Agent, addressed the Committee.

Members discussed the application and the impact on the street scene was considered. It was noted that due to the location and design there would be less of an impact when compared to the neighbouring properties.

Councillor Miss S White proposed that the application be approved contrary to the Officer's recommendation. This was seconded and agreed with the proviso that the conditions be determined between the Chairman, Vice-Chairman and Ward Members.

**RESOLVED** that the application be **APPROVED** subject to conditions as agreed in consultation with the Chairman, Vice-Chairman and Ward Members.

**245. HOUSEMAL1800686 - 3 ROOTS LANE, WICKHAM BISHOPS**

<b>Application Number</b>	<b>HOUSE/MAL/18/00686</b>
<b>Location</b>	3 Roots Lane, Wickham Bishops
<b>Proposal</b>	First floor front extension
<b>Applicant</b>	Mr. & Mrs. Trevor & Janet James
<b>Agent</b>	Mr. Mark Crocker
<b>Target Decision Date</b>	30.07.2018
<b>Case Officer</b>	Emma Worby
<b>Parish</b>	<b>WICKHAM BISHOPS</b>
<b>Reason for Referral to the Committee / Council</b>	Member Call In – Councillor Bass – public interest

Following the Officer's presentation, Mrs Janet James, the Applicant, addressed the committee.

Members discussed the application, it was noted that the current balcony was considered dated and that the proposed extension would bring the property in line with its neighbours.

Councillor H M Bass proposed that the application be approved contrary to the Officer's recommendation, this was duly seconded and agreed.

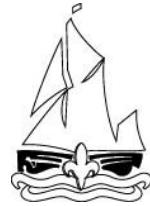
**RESOLVED** that the application be **APPROVED**, subject to the following conditions:

- 1 The development hereby permitted shall begin no later than three years from the date of this decision.
- 2 The development shall be carried out in accordance with the following approved plans and documents: Site Location Plan; Block Plan; JAMES/01/1 Rev A; JAMES/01/2 Rev A
- 3 The external surfaces of the building(s) shall be constructed of the materials specified on plan: Planning Application Form; JAMES/01/1 Rev A and JAMES/01/2 Rev A

There being no further items of business the Chairman closed the meeting at 9.23 pm.

MRS M E THOMPSON  
CHAIRMAN

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## **REPORT of DIRECTOR OF PLANNING AND REGULATORY SERVICES**

**to**

**NORTH WESTERN AREA PLANNING COMMITTEE**

**06 AUGUST 2018**

<b>Application Number</b>	<b>RES/MAL/16/01475</b>
<b>Location</b>	The Summer House Back Lane Wickham Bishops Essex
<b>Proposal</b>	Reserved matters application for the approval of appearance, landscaping and scale on outline planning application <b>OUT/MAL/13/00118</b> allowed on appeal ref APP/X1545/A/13/2201061 (Demolition of two storey detached double garage with workshop and demolition of storage shed. Removal of hard surfaced tennis court including means of enclosure and erection of single dwelling house)
<b>Applicant</b>	Mr David Brown
<b>Agent</b>	N/A
<b>Target Decision Date</b>	N/A
<b>Case Officer</b>	Yee Cheung
<b>Parish</b>	Wickham Bishops
<b>Reason for Referral to the Committee / Council</b>	This Reserved Matters is presented to Members at the North Western Area Planning Committee following a Judicial Review where the decision notice issued by the Council on 24 April 2017 was quashed by the High Court on 9 February 2018.

### **1 RECOMMENDATION**

**APPROVE** subject to the conditions (as detailed in Section 8 of this report).

### **2. SITE MAP**

Please see overleaf.

# The Summer House, Back Lane, Wickham Bishops

RES/MAL/16/01475



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Scale: 1:2,500

Organisation: Maldon District Council

Department: Department

Comments: NW Committee 16/01475/RES

Date: 24/07/2018

MSA Number: 100018588

Agenda Item no. 5

### 3. SUMMARY

#### 3.1 **Proposal / brief overview, including any relevant background information**

##### Site Description

3.1.1 The majority of the application site is located to the south of and outside the defined settlement boundary of Wickham Bishops with open countryside to the south and west. The very northernmost tip of the application site is within the settlement boundary of Wickham Bishops. To the north School Road and Grange Road are characterised by suburban development featuring predominantly detached dwellings with modest plot frontages within the built up area of Wickham Bishops. To the east there is a group of larger detached dwellings on Back Lane, which are within the development boundary. The existing dwelling 'The Summer House' sits on the junction of School Road and Back Lane within a generous plot. The site to the south contains a garage and tennis court. The garage would be demolished. The site forms part of the residential garden for the existing dwelling. Whilst the site marks a transition between the areas to its north and south it has a greater affinity to the domestic character of the settlement than the open countryside to the south.

##### Planning History

3.1.2 Outline planning permission **OUT/MAL/13/00118** for the '*demolition of two storey detached double garage with workshop and demolition of storage shed. Removal of hard surfaced tennis court including means of enclosure and erection of single dwelling house*' with the detailed matters of 'access' and 'layout' was submitted for consideration. The application was refused on 19 April 2013. This outline planning permission was subsequently allowed on appeal (APP/X1545/A/13/2201061 dated 10 February 2014). Whilst it is noted that it is now more than three years since the outline planning application was granted and the time period set out within condition 2 of the outline permission has passed, the application was extant at the time of submission of this Reserved Matters application, on 5 January 2017, and is therefore still able to be considered and implemented, if approved. The Reserved Matters application was presented to Members at the North Western Area Planning Committee on 6 March 2017 with a recommendation to approve the application subject to conditions. As there were some contentious issues regarding the legality of the application raised by a neighbouring resident, it was resolved that determination of this application be delegated to the Interim Head of Planning Services in consultation with the Chairman of the North Western Area Planning Committee together with the Ward Members. Following internal discussions and seeking advice from legal services, the Reserved Matters application was subsequently approved and a decision notice was issued by the Council on 24 April 2017 subject to conditions.

3.1.3 This decision notice **RES/MAL/16/01475** was challenged at the High Court. The High Court's decision on 9 February 2018 was to quash the decision notice and for the application to be reconsidered, this includes the amended plans, consultation responses and letters of representation, in the light of the High Court judgment. The High Court judgement will be discussed in detail below.

3.1.4 The only other planning history of relevance to the site and land that is shown to be within the applicant's control is planning application **HOUSE/MAL/11/00829** which allowed a two storey side extension to the existing dwelling.

### The Proposal

3.1.5 The Reserved Matters application, seeks to address the matters of 'appearance', 'landscaping' and 'scale' of the detached dwelling on land to the south of The Summer House. The ground floor of the dwellinghouse would comprise of the sitting room, dining, kitchen, family room and lounge. At first floor, there would be with four bedrooms (three with en-suite) and a family bathroom. The dwelling proposed would measure 16.1 metres in width at the front elevation, with chimney stacks to both sides that would extend the width to 16.7 metres. At the rear elevation the dwelling would measure 15.1 metres wide. The dwelling would measure 9.9 metres in depth.

3.1.6 Due to the site gradient gently falling from north to south, the dwellinghouse would be approximately 8.15 metres in height to ridge level when measured on the north elevation and 9 metres in height to ridge level when measured on the south elevation.

3.1.7 The dwelling would also feature a porch to the front elevation that would measure 2.5 metres wide and 1.5 metres deep with a pitched roof built to an eaves height of 2.9 metres (at the south side) and a ridge height of 4.3 metres.

3.1.8 The dwellinghouse would be positioned approximately 11 metres from the northern boundary and a minimum of 5.5 metres from the west boundary

3.1.9 In the earlier submission as shown on Drawing Nos: 16.09.01, 16.09.02 and 16.09.03, the dwellinghouse was larger in terms of floor area and of a slightly different layout as the plans showed a single-storey element which comprised of a garage and office / study. This has since been omitted through the submission of amended Drawing Nos 16.09.01 Rev A, 16.09.02 Rev A and 16.09.03 Rev B. By omitting the single-storey element, the Reserved Matters application is now akin to the 'layout' of the development which was approved under outline planning permission **OUT/MAL/13/00118**. The variance between the outline permission and the reserved matters proposal will be discussed in further detail below.

3.1.10 Based on submitted Drawing No: 16.09.02 Revision A dated 3 February 2017, the dwellinghouse would be constructed using red multi-stock brickwork and painted render for the walls. For the roof, red clay plain tiles would be used.

## **3.2 Conclusion**

3.2.1 Following the High Court decision, it is considered that the dwellinghouse, with an appearance of a traditional farmhouse, would not appear out of keeping with the character and appearance of the area, feature and protect existing landscaping adequately and not unacceptably impact on the tranquility of the wider rural area. When compared to the 'layout' approved under outline planning permission **OUT/MAL/13/00118**, it is considered that on balance, the position of the dwellinghouse, footprint, routes and open spaces within and with buildings and spaces outside the dwellinghouse would not result in a material departure from the arrangement shown on the Site Plan which formed a part of the outline planning permission **OUT/MAL/13/00118**. The proposed development, by virtue of its scale, appearance and landscaping would accord with policies S1, S8, D1 and H4 of the Maldon District Local Development Plan (LDP), Maldon District Design Guide

(MDDG), and Government advice contained within the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG).

#### **4. MAIN RELEVANT POLICIES**

Members' attention is drawn to the list of background papers attached to the agenda.

##### **4.1 National Planning Policy Framework 2018 including paragraphs:**

- 2, 7 to 12, 47, 53, 54, 59-61, 78-79, 124, 127, 130, 131, 174, 175 and 180

##### **4.2 Maldon District Local Development Plan approved by the Secretary of State on 21 July 2017**

- S1 – Sustainable Development
- S8 – Settlement Boundaries and the Countryside
- D1 – Design Quality and the Built Environment
- D2 – Climate Change and Environmental Impact of New Development.
- H4 – Effective Use of Land
- N2 – Natural Environment and Biodiversity.
- T1 – Sustainable Transport
- T2 - Accessibility

##### **4.3 Relevant Planning Guidance / Documents:**

- National Planning Policy Guidance (NPPG)
- National Planning Policy Framework (NPPF)
- Essex Design Guide (EDG)
- Car Parking Standards
- Maldon District Design Guide (MDDG)

#### **5. MAIN CONSIDERATIONS**

##### **5.1 Principle of Development**

5.1.1 As set out above, outline planning permission (reference **OUT/MAL/13/00118**) for the '*demolition of two storey detached double garage with workshop and demolition of storage shed. Removal of hard surfaced tennis court including means of enclosure and erection of single dwelling house*' with the detailed matters of 'access' and 'layout' submitted for consideration and was refused on 19 April 2013. This outline planning permission was subsequently allowed on appeal APP/X1545/A/13/2201061 dated 10 February 2014.

5.1.2 This application is a reserved matters application for the approval of 'appearance', 'landscaping' and 'scale' in relation to approved outline planning application **OUT/MAL/13/00118**. No other matters should be considered.

5.1.3 The Council can demonstrate in excess of a five year supply of housing and this is set out in the Council's Five Year Housing Land Supply Statement and the Council's

Advisory Note, both dated September 2017. This is a material planning consideration. However this application is to consider the reserved matters of ‘appearance’, ‘landscaping’ and ‘scale’ in relation to approved planning application **OUT/MAL/13/00118** and therefore the principle of the development has already been established.

## 5.2 Procedural Matters

5.2.1 It is considered important to acknowledge that a previous decision of the Local Planning Authority to approve the reserved matters application has been the subject of a Judicial Review which has led to that original decision being quashed and the application being ‘returned’ to the Local Planning Authority for re-assessment. A copy of the judgement is included at **APPENDIX 1**.

5.2.2 Judicial Reviews most commonly represent legal challenges with regard to the procedures that were followed in reaching a decision rather than the judgement of planning merits which is most commonly left to the assessment of the Local Planning Authority or the Planning Inspectorate. In this case the Judicial Review was raised on the grounds of a number of procedural matters and the Judgement that has been provided sets out a number of areas that are considered to require comment. This is especially pertinent given the content of letters of objection that have been received which comment on matters that have been directly addressed within the judgement.

5.2.3 The Judicial Review undertook an assessment of whether the application had been validly made and determined. The judicial review focused on the following key aspects which will be addressed in turn below:

- Whether the terms of the application could reasonably be altered after the initial submission.
- Whether amended plans could be considered.
- Whether the pre-approved layout of the development should restrict the scale of the development.
- The decision making process of the Council.

Each of the relevant considerations will be assessed in turn below.

### Whether the terms of the application could reasonably be altered after the initial submission.

5.2.4 It is noted that the submitted plans were required to be varied during the course of the application and that the description of the proposal and the terms of the application were also required to be clarified.

5.2.5 Whilst the detail of certain aspects will be discussed further below, it is considered that the maintained objection from a third party in respect of this matter is not consistent with the findings of the Judicial Review and should therefore be afforded little weight accordingly.

### The Matter of Layout

5.2.6 When the application was first submitted to the Local Planning Authority, the applicant had completed the application form in such a way to indicate that the approval of the matter of layout was being sought. This had previously been agreed at

outline stage and could not therefore be re-considered under the terms of the reserved matters application. This was an administrative error on behalf of the applicant and was subsequently corrected.

5.2.7 The application was publicised in accordance with the Council's conventional practices on two occasions and in each occasion the term 'layout' was included in a manner that would imply that it was to be considered. This was incorrect and represented an administrative error.

5.2.8 The judgement identifies that there were errors made in this regard and identifies that interested parties should have been made aware of the corrected description of the proposal. However, the judgement also goes on to conclude that no party has been prejudiced by this previous inaccuracy. In this respect it is considered most pertinent to note that the judgement concludes the following:

*"It is necessary, in order for any consultation to be fairly conducted, that those consulted know on what they are being consulted. In this case the Claimant and others did not know either about the amendment and the second revised layout plan during the period for making representations.....[the claimant's representative], failed to persuade me, however, that the substitution of the second for the first revised layout plan meant that the Claimant was prejudiced in the representations that he might have wished to make on the planning merits of the amended drawings. "*

*"The Claimant was not offered the opportunity to reformulate any objections that he may have had to the revised plan including the additional site area in the knowledge that the Interested Party was claiming that it did not require its layout to be approved. That might have caused him to consider whether to make, and to make, additional representations, on whether the "layout" on the second revised plan was in conflict with the "layout" on the Site Plan. He did not have that opportunity. In my judgment it is not satisfactory for the Council merely to say that in fact he had the opportunity after March 6th 2016 to make such representations when they had previously told him that the period for making them had ended. The question is, however, whether he has suffered any material prejudice. [The representative of the claimant] has not identified any such representations that he would or could have made had he been given that opportunity or any other practical detriment the Claimant suffered by being deprived of it."*

5.2.9 Now that the application is being re-determined by the Local Planning Authority, further phases of publicity of the application has occurred with the description being that which is set out above. Although it is apparent that no party was prejudiced by the previous inaccuracy, it is the case that the matter has been corrected and there is no grounds for a case to be made that the description of the proposal is inaccurate.

#### Ability to Submit and Consider Amended Plans and Additional Information

5.2.10 Amended plans and additional information have been received prior to the judicial review and after. In this respect the Judicial Review sets out the following:

5.2.11 *"an amendment of an application for approval of a reserved matter was permissible generally at any stage but that there were two limitations on this freedom to amend after the expiry of the period limited for such applications: (i) an application which dealt with some only of the specified reserved matters cannot be amended after that*

*date to deal with another specified reserved matter; and (ii) no amendment would be made which would have the effect of altering the whole character of the application so as to amount in substance to a new application.... However, subject to those limitations, an application which dealt with a reserved matter “to some extent” may still be amended after that date providing some further or some different details in respect of that reserved matter.”*

5.2.12 From this basis, and noting the content of the National Planning Practice Guidance in respect of this matter, it is considered that it is possible and entirely legitimate to be able to consider amended plans.

Whether the pre-approved layout of the development should restrict the scale of the development.

5.2.13 A substantial feature of the letters of objection that have been received at this time and previously relates to the reserved matters that are to be considered and the inter-relationship between those matters.

5.2.14 The Town and Country Planning (General Permitted Development) Order 2015 and NPPG defines ‘scale’ and ‘layout’ as follows:

- ‘Layout’ – the way in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development.
- ‘Scale’ – the height, width and length of each building proposed within the development in relation to its surroundings.

5.2.15 The point of contention that has been assessed within the judicial review is whether the scale of the proposed dwelling (in terms of its width and length) has been inherently fixed due to the approval of the layout of the development. The suggestion put forward by an objector is that by approving the layout of the developments within the site, a perimeter is created which the proposed dwelling cannot breach without representing a material change to the layout. An approved matter cannot be re-approved and therefore it is suggested that once the layout has defined the perimeter of the dwelling, it cannot be amended under the terms of the assessment of the matter of ‘scale.’

5.2.16 The judgement sets out that this is not the case. Scale does not relate to height alone. The definition of ‘scale’ makes it clear that it includes the height, width and length of the building and therefore it must be the case that the scale of the building can be assessed separately from the layout, with a reasonable degree of tolerance afforded to any deviations to that which might have been approved at outline stage. The judgement is clear that scale and layout can be determined separately and that if this was not the case, they would either not be separated or required to be submitted at the same time, which is not the case. Paragraphs 66, 67, 69 and 70 of the High Court decision where ‘Layout’ and ‘Scale’ are considered to be of substantial relevance in respect of this matter.

5.2.17 The judgement is clear that where there is some variation between plans, it is a matter of judgement for the Local Planning Authority to judge whether or not the proposal is so substantially different to be able to be considered as a reserved matter of the outline permission or require a new planning permission.

5.2.18 In making this assessment, it is therefore considered necessary to establish the key dimensions of the dwelling and the site as shown at outline stage (plan 12.2005/P201) and at reserved matters stage (plans 16.09.01 Rev A and 16.09.03 Rev B). These are set out in the table below:

	<b>Width</b>	<b>Depth</b>	<b>Height</b>	<b>Position away from the northern, eastern, southern and western boundary of the application site</b>
<b>OUT/MAL/13/00118</b> Approved 'Layout' (Existing garage to be demolished). All measurements taken from plan reference 12.2005/P201	15.5 metres	11 metres	Two-storey in height ('Scale' was reserved for subsequent approved)	North - 2.7 metres East - 10.8 metres South - 18.2 metres West - 11.5 metres
Reserved Matters <b>RES/MAL/16/01475</b> Measurements taken from plans referenced 16.09.01 Rev A and 16.09.03 Rev B	16.1 metres (front elevation and 15.1 metres (rear elevation This averages out to 15.55 metres.  The chimney stacks to the side extend the width of the dwelling to 16.7 metres.	9.8 metres	Due to the site gradient, the new dwellinghouse would be 8.5 metres in height when measured on the north elevation and 9.1 metres when measured on the southern elevation. The height of the development would be 8.3 metres when measured from finished floor level).	North – 5.2 metres East – 12.3 metres South – 14.5 metres West - 11.5 metres

5.2.19 In this instance it is considered that the dwelling has been shown in fundamentally the same position in the two plans. The footprint of the proposed dwellings (measured externally) has been reduced from 173 square metres to 157 square metres. It is acknowledged that the dwelling is of a different shape and of different dimensions, but the similarities are considered to be sufficient for the Local Planning Authority to be able to be satisfied that the proposed development remains 'within the ambit' of the outline permission.

5.2.20 While the Council notes that the layout and position of the dwellinghouse was approved at the outline stage and the distance from the northern boundary has been amended from 2.7 metres to 5.2 metres in this Reserved Matters application, which means that the distance of the dwellinghouse to the southern boundary of the site has been reduced from 18.2 metres to 14.5 metres, and that there are changes to the distance from the eastern boundary of the site, it is considered that the relationship between the dwellinghouse, routes and open spaces within the site and its surroundings would be of negligible difference.

5.2.21 It is acknowledged that the objector maintains their objection in this respect, but for the reasons set out above, it is considered that the proposal can be considered to reasonably follow from the outline planning permission that was granted. The width of the dwelling would increase in part, but be reduced for another part and as chimney stacks are considered to be a minor intrusion to the side elevations, it is considered that these can reasonably be excluded from the calculations of the width of the dwelling. The distances from the boundary do change more significantly, but in the context of the site and as the majority of the proposed dwelling would overlap the majority of the existing dwelling, it is considered that the level of divergence is within what can be considered a reasonable level of tolerance. Moreover, it is considered that the change of the shape of the building has not made it 'irregular' and as found at paragraph 75 of the judicial review, the creation of a terrace and patio area must be considered to form part of the landscaping of the site and not the layout of the development at the site.

5.2.22 A new planning application (either in outline or in full) is therefore not required to be submitted. Notwithstanding the objection, it is recommended that this assessment is accepted as the position of the Local Planning Authority, based on its planning judgement, which it is reasonably entitled to exercise at its discretion as set out within the conclusion of the Judicial Review.

#### Procedures Relating to Determination

5.2.23 When the application was previously determined by the Local Planning Authority the Council's North West Area Planning Committee deferred powers to the Chief Executive to determine the application having first resolved some outstanding matters in relation to the validity of the application. The Judicial Review has found that the manner in which reports were prepared and made available to the Chief Executive was inadequate and the manner in which the final decision of the Chief Executive was recorded was also inadequate.

5.2.24 This application is being presented to the Council's North West Area Planning Committee with a recommendation to determine the application. It is not recommended that the final decision is deferred to Officers and therefore the issue identified within the judgement will no longer be applicable.

### **5.3 Scale, Appearance and Landscaping**

#### Introduction

5.3.1 The application seeks the approval of the matters of scale, appearance and landscaping of the development. In this instance it is considered appropriate to address each of these matters individually and in turn, having first set out a general summary of the relevant policy background in respect of these matters. The policy background is considered to be of primary importance as the Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out that decisions must be made in accordance with the development plan unless material considerations indicate otherwise.

#### Policy Context

5.3.2 Policy D1 of LDP is applicable to the consideration of design. This policy coupled with the NPPF aim to ensure good design taking into account matters including architectural style, layout, materials, visual impact and height, scale and bulk.

5.3.3 The NPPF states in Paragraph 124 that “*The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.*” and in paragraph 130 that “*Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents.*”

5.3.4 Policy H4 states that All development will be design-led and will seek to optimise the use of land having regard to, amongst other matters, the location and the setting of the site and the existing character and density of the surrounding area. Policy S8 states that “*planning permission for development will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon.*”

5.3.5 In addition to the above, it is also pertinent to note that in December 2017, the Local Planning Authority adopted the MDDG which is an adopted Supplementary Planning Document and is now a key mechanism for the delivery of design quality within the district. This new guide, not only looks at overall layout and form, but also the individual characteristics of the natural and built environment. This document is now a material consideration in the assessment of all planning applications.

5.3.6 In terms of residential amenity, policies D1 and H4 of the LDP advise that any development should protect the amenity of surrounding areas taking into account privacy, overlooking, outlook, noise, smell, light, visual impact, pollution, daylight and sunlight and that any backland / infill development should not result in unacceptable material impact upon the living conditions and amenity of nearby properties.

#### General Character of the Site and Surrounding Area

5.3.7 The application site is located to the south of the development boundary with open countryside to the south and west. To the north School Road and Grange Road are characterised by suburban development. This is predominantly detached dwellings with modest plot frontages within the built up area of Wickham Bishops. To the east there is a group of larger detached dwellings on Back Lane, also within the development boundary. The existing dwelling sits on the junction of School Road and Back Lane within a generous plot. The site to the south contains a garage and tennis court. The existing garage would be demolished. The site forms part of the residential garden for the existing dwelling. The locality is on the fringe of the core settlement of Wickham Bishops and the immediate area has a suburban residential feel and appearance. Whilst the Planning Inspector had noted that the site marks a transition between the areas to its north and south, it was considered that the site had a greater affinity to the domestic character of the settlement than the open countryside to the south.

5.3.8 The site would be read as part of the edge of the settlement area. It would continue the line of dwellings and form a logical addition at the end of the group of properties as it turns the corner of School Road. Therefore the introduction of a dwellinghouse in this location would sit comfortably as part of the existing frontage development that typifies the settlement at this point. This is reinforced by the site levels where the

difference is approximately 1 metre when compared between the Summer House and the tennis court area where the new dwelling would be sited upon. The proposal would place the new dwelling lower than the existing dwelling Summer House, and the ability to reinforce landscaping through the current reserved matters. It is considered that these factors in combination with the size of the plot would lessen the visual impact of the development proposal.

Scale

5.3.9 For the avoidance of doubt, it should be noted that the definition of scale contained within the Town and Country (Development Management Procedure) Order 2015 is as follows:

*“the height, width and length of each building proposed within the development in relation to its surroundings.”*

5.3.10 The dwelling proposed would be a two storey dwelling, which is not considered to be out-of-keeping with the scale of other dwellings within the surrounding area. It is considered that the height of the proposed dwelling is appropriate for a two storey dwelling and it is acknowledged that the overall height is reduced by virtue of the fact that the rear part of the dwelling would have a roof height that is approximately 0.8 metres lower than the roof height of the main front part of the dwelling. The 6.3 metre depth of the front part of the building would enable the building to have a roof that is well proportionated and not unduly tall relative to the overall scale of the building.

5.3.11 Notwithstanding the above discussion with regard to the scale of the dwelling relative to that which was shown on the layout, it is considered that the width and depth of the dwelling is subordinate to the overall dimensions of the site and in no regard would appear cramped. Similarly it is considered that the density of the proposed development, as a result of the width and depth of the dwelling, would not be unlike the grain of development within the surrounding area.

5.3.12 In terms of impact on the amenities of neighbouring residents, it is noted that the proposed dwelling would be located approximately 23 metres from The Summer House and a minimum of 45 metres from all other dwellings. Due to these separation distances, it is considered that a dwelling of the scale proposed, would not cause a loss of light or outlook within any neighbouring residential property to an extent that would justify the refusal of the application on those grounds.

5.3.13 Similarly, as a bi-product of the scale of the dwelling is the amount of accommodation proposed, it is considered appropriate to assess the impact of the use of the dwelling in terms of general amenities and disturbance. In this respect it is considered that the scale of the dwelling would not derive a residential use that would exceed what would have reasonably been expected when outline planning permission was granted and as such no objection should be raised to the scale of the proposed dwelling on those grounds.

5.3.14 For these reasons it is considered that the scale of the proposed development can be found acceptable.

### Appearance

5.3.15 For the avoidance of doubt, it should be noted that the definition of appearance contained within the Town and Country (Development Management Procedure) Order 2015 is as follows:

*“the aspects of a building or place within the development which determine the visual impression the building or place makes, including the external built form of the development, its architecture, materials, decoration, lighting, colour and texture.”*

5.3.16 In terms of design, the proposed dwelling would have an appearance of a traditional farmhouse. The dwelling would have symmetrical pattern of window openings arranged around the front door on the central axis. This results in the dwelling being symmetrical, well balanced and in proportion in appearance when viewed from the public domain in accordance with policy D1 of the LDP, the MDDG and Government advice contained in the NPPF.

5.3.17 The proposed dwelling, by virtue of its traditional design and the use of appropriate materials would be in-keeping with the traditional Essex vernacular and therefore not appear as an intrusive or incongruous addition to the area.

5.3.18 In terms of impact on the amenities of neighbouring residents, it is noted that the proposed dwelling feature numerous doors and windows on all elevations except for the north elevation which would only feature a ground floor door. As set out above, the dwelling would be positioned a substantial distance from all neighbouring dwellings and due to these separation distances and the positioning of the proposed windows, it is considered that the positioning of windows (which contributes to the appearance of the dwelling and is therefore able to be assessed as part of this matter) would not result in overlooking of neighbouring properties to an extent that would justify the refusal of the application on those grounds.

### Landscaping

5.3.19 For the avoidance of doubt, it should be noted that the definition of landscaping contained within the Town and Country (Development Management Procedure) Order 2015 is as follows:

*“the treatment of land (other than buildings) for the purpose of enhancing or protecting the amenities of the site and the area in which it is situated and includes: (a) screening by fences, walls or other means; (b) the planting of trees, hedges, shrubs or grass; (c) the formation of banks, terraces or other earthworks; (d) the laying out or provision of gardens, courts, squares, water features, sculpture or public art; and (e) the provision of other amenity features.”*

5.3.20 Within the site it is proposed that the vehicular access would be provided in a position that is the same to that which was shown on the outline application, leading to a driveway at the north east part of the site that would extend to the land in front of the dwelling. To the rear of the dwelling, a terrace and patio area is proposed and the remainder of the majority of the site would be lawned. It is considered that this hard and soft landscaping within the site is appropriate for a dwelling of this type and in this context.

5.3.21 Condition 06 of the outline planning permission states that “*Concurrently with the first submission of reserved matters details of the access and parking areas shown on drawing 12.2005/P201 RevA, including any means of enclosure, shall be submitted to and approved in writing by the Local Planning Authority.*” It is considered that the details of hardstanding that have been provided are acceptable to address this matter.

5.3.22 In addition to the matters relating to the proposed landscaping of the site, it is considered that this is the appropriate arena to consider the impact on the trees at and adjacent to the site. It is noted that this is a substantial area of objection from an interested party.

5.3.23 With regard to the trees to the eastern boundary of the site, the Tree Officer had confirmed that a TPO 3/14 was served to provisionally protect the trees along this site boundary (which is also the boundary with the entrance to Crabbs Farm) as a result of concerns raised about the safety of trees on the site. The serving of a provisional TPO enabled the Council to establish whether the trees in question are at risk. In this case, the trees have not been subject to damaged or unsuitable works since and therefore the original expediency for the serving of TPO 3/14 had no longer applied. However, the Tree Officer had acknowledged that Condition 8 of outline planning permission **OUT/MAL/13/00118** requires tree protection information to be submitted and approved prior to commence of work on site. Therefore this would not need to be repeated in this Reserved Matters application.

5.3.24 Following the High Court decision, the Council has sought a second opinion from an independent Tree Officer. On 5 March 2018, the following advice was provided by the specialist:-

*“Existing trees are predominantly located within a boundary hedge line to the east of the site and located parallel to the Crabbs Farm access drive. Other, less significant trees and woody perennial vegetation is located sporadically throughout the site. The line of significant trees along the eastern boundary consists of birch, ash, oak and holly; with oak being the dominant species. On accessing the online database, I can find no record of a tree survey ever being undertaken and I can find no site-specific methodologies or tree protection measures detailed anywhere within the submitted information. These are significant trees with a range of species, condition and age class present and the proposal should seek to safeguard them throughout development and beyond.”*

5.3.25 Based on the details and amended plans submitted, the Tree Officer initially advised that the proposal cannot be accurately assessed without further specialist arboricultural input. However, provisionally, from looking at the detail submitted thus far, the following comments can be made:-

- *There is insufficient new planting detail in order to mitigate the direct loss of trees required to facilitate the proposal*
- *No tree survey is provided, leading to a lack of confidence in the assumed root protection areas (RPA's)*
- *No RPA's are shown for several retained trees*
- *Demolition of the existing surfaces and structures may cause harm to retained trees if not undertaken with care*

- *Excavation of the new foul water drainage system may cause harm to retained trees.*
- *The proposed driveway and turning area appears to encroach within identified RPA's and may cause harm if not specified and installed with care*

5.3.26 The Tree Officer concluded that the Applicant must provide the following specific detail, in full accordance with BS 5837, to enable a full appraisal to be made of the impact of the proposed scale and landscaping on retained, existing trees:

- *Tree Protection Plan;*
- *Arboricultural Method Statement, including; Full construction detail of proposed driveway (including edge restraint and wearing course) Full construction detail for new foul water drainage system; Methodology during demolition of existing surfaces and structures; and Required facilitative tree pruning details*
- *More detail on stock size and to include larger growing species as part of the mitigation planting proposals in lieu of trees lost to enable development.*

5.3.27 The applicant has subsequently provided a Arboricultural Report and Arboricultural Implications Assessment, a Landscape Plan and a Tree Protection Plan and, which has been the subject of a further phase of public consultation and input from the Tree Officer.

5.3.28 One area of conflict has been addressed by an objector who has identified that a tree at the north east corner of the site that was shown to be removed on plan 16.09.03 Rev B, is now shown to be a group of Hazel trees that can be retained according to the arboricultural submissions. Similarly a Cherry Tree (T9) at the south west corner of the site was one of four fruit trees that were shown to be removed, but is now to be retained.

5.3.29 It is noted that there is an inconsistency between plans. However, It is considered that the retention of trees in accordance with the latest tree protection submissions, notwithstanding the content of plan 16.09.03 Rev B, can be secured under the terms of a condition. As this inconsistency can adequately be addressed by a condition and a tree can be retained that was not previously intended to be retained, it is considered that addressing this matter through the imposition of a condition is entirely appropriate.

5.3.30 It is considered that addressing this matter through the imposition of a condition will not have prejudiced the ability of the objector to comment on the submissions. It is not considered that the retention of more trees than initially forecast would be a sound reason to refuse this application.

5.3.31 The latest advice from the Tree Officer sets out that “*The submitted information leaves me assured that the proposed development can be implemented whilst retaining the most valuable trees and that those trees identified for removal can be mitigated for through the specification of suitable replacement planting. However, the submitted landscape Plan should be updated to show the size, species and planting location of 3 replacement trees, not 2 as is currently the case.*”

5.3.32 From this basis it is considered that the landscaping of the proposed development, including the retention of trees at the site, can be found acceptable and in accordance with the abovementioned policies of the Development Plan.

5.3.33 It is noted that condition 8 of the outline planning permission cannot be discharged through the approval of reserved matters details and therefore a discharge of condition application will still need to be submitted. However, based on the detail submitted, it is considered that the trees to be retained at the site will be able to be adequately protected during the proposed development.

#### **5.4 Surface Water and Foul Water Drainage**

5.4.1 Policy D5 states that development should minimise the risk of flooding and policy D2 states that development should minimise all forms of pollution. Condition 5 of the outline planning permission reads as follows: *“Concurrently with the first submission of reserved matters details of the surface water and foul water drainage to serve the development shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be completed before the building is occupied in accordance with the approved details.”*

5.4.2 To address this matter the application includes the following details:

- Kingspan Drainage Plan DS1190P and a specification that was submitted within an email dated 02 February 2017.
- Drainage Soakaway Calculations prepared by DMA Building Designs (Dated 11-06-2018)
- Email confirmation from Anglian Water 01 February 2017 that they are willing ‘in principle’ to accept an indirect connection to their infrastructure.

5.4.3 These submissions have been assessed by the Council’s Environmental Health Department who have advised the following:

- *“We have reviewed the information supplied by DMA Building Designs dated June 2018 which indicates that the Aqacell soakaway scheme will be acceptable. From the information provided the condition can be complied with.”*
- “With regards to the new information the foul drainage scheme would be suitable. However we need verification that it is going the mains sewer as the comment from Anglian Water is a only a tentative acceptance and they require further information.

5.4.4 The issue raised with respect to the tentative approval by Anglian Water is not considered to be a reason to object because the condition can be discharged on the grounds that that means of providing foul water drainage would be acceptable, if it should transpire that it is not possible to provide this method of foul water drainage, an amended scheme would be required to be submitted under the terms of a new application.

5.4.5 Based on this assessment it is considered that the foul and surface water drainage details that have been provided are acceptable. Therefore, provided that the development is undertaken in accordance with the approved details, as required by 5

of the abovementioned condition, it is considered that the proposal will be in accordance with the requirements of condition 5.

## 5.5 Other Matters

### Impact on Residential Amenity

5.5.1 As set out above, policies D1 and H4 of the LDP advise that any development should protect the amenity of surrounding areas taking into account privacy, overlooking, outlook, noise, smell, light, visual impact, pollution, daylight and sunlight and that any backland / infill development should not result in unacceptable material impact upon the living conditions and amenity of nearby properties.

5.5.2 An assessment of the impact of the impact on neighbouring residents has been undertaken in respect of each reserved matter above. In summary, it has been found that a reasonable distance of 23 metres would be retained between 'Summer House' and the proposed dwelling to the south of the plot. It is noted that no first floor windows are proposed on the northern flank wall of the dwelling and as such, no overlooking, interlooking or loss of privacy would occur between the existing occupiers at that property or the future occupiers at this property. Having considered the distance between the new dwellinghouse and existing residential properties 'Timberleys', 'Brackleys', and 'Springbrooks' to the north of the application of approximately 40 metres (Timberleys), 52 metres (Springbrooks) and 58 metres (Brackleys), it is considered that the development of this site would not prejudice the amenity of the existing occupiers of those properties to warrant refusal. The impact to the aforementioned residential properties has further reduced due to the alterations to the dwelling that have been set out above in comparison to that which was shown at outline stage. In this respect, the proposal would accord with policies D1 and H4 of the LDP.

### Access, Parking and Highway Safety

5.5.3 Policy T2 of the LDP aims to create and maintain an accessible environment, requiring development proposal, inter alia, to sufficient parking facilities having regard to the Council's adopted parking standards. Similarly, policy D1 of the LDP seeks to include safe and secure vehicle and cycle parking having regard to the Council's adopted parking standards and maximise connectivity within the development and to the surrounding areas including the provision of high quality and safe pedestrian, cycle and, where appropriate, horse riding routes.

5.5.4 The Maldon District Council Vehicle Parking Standards (VPS) contain the parking standards which are expressed as maximum standards. This takes into account Government guidance which encourages the reduction in the reliance on the car and promotes methods of sustainable transport. The VPS states that residential dwellings comprising three or more bedrooms require a maximum of three parking spaces. The dwelling is set back from the eastern boundary of the site which allows additional vehicles to be accommodated within the side and front curtilage of the dwellinghouse. In this respect, the proposal would accord with policies D1 and T2 of the LDP in terms of car parking provisions within the site.

5.5.5 It is noted that letters of representation have been received commenting that a dwellinghouse of this size without a garage '*would be to the significant detriment of the future occupiers' amenity.*' It is important to note that it is not unusual for

dwellinghouses of this scale not to have garages for the parking of vehicles. While the Planning Inspectorate has imposed a planning condition removing permitted development rights for garages, extensions and separate buildings (other than ancillary outbuildings not exceeding 10 cubic metres in volume - Condition 7 of outline planning permission **OUT/MAL/13/00118**), this does not preclude the future occupiers of the site for submitting a planning application for a garage to be constructed within the plot if they so wished.

5.5.6 In terms of access / egress point to the site, this has been approved under the outline planning application **OUT/MAL/13/00118** as it was submitted for consideration at the time. On Drawing No: Drawing No: 12.2005/P201 in the outline planning application, the application site edged in red, showed the access / egress point which currently serves The Summer House to be utilised for the new dwellinghouse within application site. This access / egress point to the site has not changed when compared to the outline and Reserved Matters application and the amended plan Drawing No: 16.09.03 Revision B dated 27 February 2017 was only submitted by the Applicant in response to a letter of representation stating a new access was being formed onto the private access drive that serves Crabbs Farm. The Highway Authority was re-consulted and has raised no objection to the proposal.

5.5.7 In Paragraph 65 of the High Court decision, the Judge considers that access to the dwellinghouse as shown within the main site area is not in conflict with that on the Site Plan (Drawing No: 12.2005/P201 dated 10 January 2013 in the outline planning application **OUT/MAL/13/00118**).

#### Private Amenity Space

5.5.8 Policy D1 of the LDP requires all development to provide sufficient and usable private and public amenity spaces, green infrastructure and public open spaces. In addition, the adopted MDDG SPD advises a suitable garden size for each type of dwellinghouse, namely 100m<sup>2</sup> of private amenity space for dwellings with three or more bedrooms. This is also set out in the EDG where it advises that a suitable garden size of 100m<sup>2</sup> for dwellings with three or more bedrooms should be provided. This requirement depends on the location and how the development relates to the prevailing character of the area.

5.5.9 The garden space proposed to the rear and side for the new dwellinghouse measures approximately 530 square metres and would be in excess of the standard contained within the EDG for a three or more bedroom dwelling. As such, the proposal would accord with policy D1 of the LDP, the MDDG, and the EDG.

#### Construction Traffic

5.5.10 Letters of representation have been received concerning traffic movement by construction vehicles to and from the site. The Highway Authority has assessed the application and no conditions have been suggested regarding this matter. Further, this issue was not flagged up by the Planning Inspector in the outline planning application **OUT/MAL/13/00118** and as such, the Council has not imposed such condition on this current Reserved Matters application.

#### Housing Mix

5.5.11 The proposal would provide one x four bedroom open market dwellinghouse. Policy H2 of the LDP contains a policy and preamble (paragraph 5.2.2) which when read

alongside the evidence base from the Strategic Housing Market Assessment (SHMA) shows an unbalanced high number of dwellings of three or more bedrooms, with less than half the national average for one and two bedroom units. The Council therefore, encourages, in Policy H2 the provision of a greater proportion of smaller units to meet the identified needs and demands. The Council's updated Strategic Housing Market Assessment (SHMA), published in June 2014, identifies the same need requirements for 60% of new housing to be for one or two bedroom units and 40% for three bedroom plus units.

5.5.12 The NPPF is clear that housing should be provided to meet an identified need as set out in Paragraph 61 of the NPPF where it states that "*the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies.*" In this instance, the proposed dwellinghouse would not assist in meeting the housing shortfall need as set out in the SHMA and Policy H2 of the LDP. However, it is important to note that no planning conditions or any informative was imposed on the outline planning application **OUT/MAL/13/00118** (appeal decision: APP/X1545/A/13/2201061), this effectively means that Council has no control on the housing mix and therefore the Applicant can determine the housing mix without the need for any approval from the Council. It is clear in planning law that the Council cannot refuse a Reserved Matters approval due to unacceptable housing mix unless a condition has been imposed to require such a matter to be agreed at the Reserved Matters stage. It is therefore considered the Council has to accept the housing mix, a one x four bed dwellinghouse being provided in this Reserved Matters submission.

## 6. ANY RELEVANT SITE HISTORY

- **OUT/MAL/13/00118** - Demolition of two storey detached double garage with workshop and demolition of storage shed. Removal of hard surfaced tennis court including means of enclosure and erection of single dwelling house. Refused: 19 April 2013. Allowed on Appeal: 10 February 2014
- **HOUSE/MAL/11/00829** - Two storey side extension to the existing dwelling. Approved.

## 7. CONSULTATIONS AND REPRESENTATIONS RECEIVED

### 7.1 Representations received from Parish / Town Councils

Name of Parish / Town Council	Comment	Officer Response
Wickham Bishops Parish Council comments received dated 7 March 2018 following the High Court decision and 10 July 2018 following the submission of the arboricultural documents	Object for the following reasons:- <ul style="list-style-type: none"> <li>• Increase in size of the proposed dwelling, the addition of a third storey, layout alterations and tree removal, all contrary to</li> </ul>	Addressed by Scale and Landscaping sections of report.

Name of Parish / Town Council	Comment	Officer Response
referred to above.	<p>the plans approved at Appeal for this site;</p> <ul style="list-style-type: none"> <li>• 50% increase in size;</li> <li>• The dwelling would appear visually intrusive in the rural landscape due to its size, height, massing and proportions and would result in an overdevelopment of the plot;</li> <li>• Lack of protection for the group of trees on the eastern boundary (G1 – TPO 3/14)</li> <li>• A dwelling of this size without a garage would be to the significant detriment of the future occupiers' amenity.</li> <li>• The Arboricultural Impact Assessment demonstrates that inadequate access exists to ensure the protection of the trees during construction. The root protection zone would be breached and this is therefore another reason to object to the proposal.</li> </ul>	

## 7.2 Statutory Consultees and Other Organisations (*summarised*)

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
Highway Authority consultation response dated 6 March 2018 following the High Court decision	The Highway Authority observes that this is a re-consultation to a 2016 application and that the word "layout" is now omitted from the description of this application. No objection subject to informative	Noted in 'Access and Parking'

### 7.3 Internal Consultees (*summarised*)

Name of Internal Consultee	Comment	Officer Response
Environmental Health Services following the High Court decision (7 March 2018)	No objection. The relevant comments are set out above.	Noted in 'Other Consideration'
Tree Officer	The Tree Officer has been consulted twice in the period since the judicial review, once commenting that additional information was necessary and then subsequently commenting on that additional information. The conclusion is that the tree assessment and protection details are acceptable, but that three replacement trees should be provided instead of two.	Noted in 'Landscaping' Section

### 7.4 Representations received from Interested Parties (*summarised*)

7.4.1 Prior to the first determination of the application by the Local Planning Authority, letters were received **objecting** to the application from four addresses and the reasons for objection are summarised as set out in the table below:

Comment	Officer Response
It was requested that clarification was provided in respect of the deadline for providing comments and that the site is viewed from the west.	Further consultation has subsequently taken place and the site has been viewed from the west.
The application should be deemed to be invalid for the reasons that are discussed fully above.	This matter is fully discussed above and was the subject of the judgement.
The proposals showed the removal of trees that were previously intended to be retained and provided the basis for the appeal decision.	The issue of tree retention has been further addressed through additional submissions by the applicant which are discussed in the report and below.
The planning history of the site with regard to trees and the construction of a garage was discussed.	Comments noted.
The scale of the development would be materially larger than shown at outline stage.	This matter is fully discussed above and was the subject of the judgement.
Boundary treatments would have a detrimental impact on the sense of space about the house.	Boundary treatments would be detailed under the terms of a condition.

Comment	Officer Response
The appearance of the development would be in contrast with that which was envisaged at outline stage and the appearance of the dwelling would not be mitigated through landscaping as a result of its removal and inadequate replacement.	This matter is fully discussed above, was the reason for amended plans being submitted and was the subject of the judgement.
Changes have been proposed to the manner in which the site would be accessed.	This matter was addressed within the judgement and did not amount to a reason to uphold the challenge.
Insufficient space exists for contractor vehicle parking.	The Highway Authority has assessed the application and no condition has been suggested regarding to the submission of a Construction Management Plan.
The first set of amended drawings did not address the objections initially raised.	A further amended drawing was therefore received and the appropriateness of this is discussed within the judgement.
The Tree Preservation Order at the site should not have been removed without consultation.	The Tree Preservation Order was not confirmed but trees at the site can be protected under the terms of a condition.
The dwellinghouse and its terrace would be materially greater than originally shown and cause a loss of green space at the site.	This matter is fully discussed above and was addressed by the judgement.
The absence of garaging would make the development incoherent and unrealistic and therefore further development will follow.	Any subsequent proposals would require a separate planning permission which would be assessed on their own planning merits.
The use of the access to the site will detract from highway safety and will be reliant on a shared access with a neighbouring property.	Not a material consideration of relevance to the reserved matters.

7.4.2 Prior to the first determination of the application by the Local Planning Authority, a letter was received **commenting** on the application which included the following comments:

Comment	Officer Response
The initially submitted plans were identified as being inconsistent with that which was shown at outline stage.	Addressed above.
It was asked if the development would align with the comments made in the original submission.	Addressed above.
It was identified that other developments of similar scale as that shown in the initial plans, within the vicinity of the site, have been refused.	Each application should be considered on its own merits and it is noted that the plans were revised after this comment was made.

Comment	Officer Response
A condition should be imposed to require all construction traffic is contained within the site.	No request for a construction management plan has been received from any consultees.

7.4.3 Prior to the first determination of the application by the Local Planning Authority, a letter was received **in support** of the application which included the following comments:

Comment	Officer Response
The new house would sit comfortably amongst the other houses in Back Lane. The site is well screened by the copse of trees.	Noted in 'Design and Impact on the Character of the Area' and 'Tree Protection' section in the report.

7.4.4 Following the judgement and due to the submission of additional information, two further phases of public consultation have been undertaken.

7.4.5 Further letters were received **objecting** to the application from 4 addresses and the reasons for objection are summarised as set out in the table below:

Comment	Officer Response
The dwelling is materially taller and larger than that which was shown within the outline planning permission.	This scale of the building discussed fully above.
The proposal will not be sympathetic to the countryside as previously envisaged.	This impact of the development on the character of the area is discussed above.
Additional planting would not be provided and trees would be removed.	The impact on trees and adequacy of replacement planting is addressed above.
The dwelling will result in extra vehicles entering and leaving the site.	Access to the site is not a reserved matter.
The entrance to the site is unsafe.	Access to the site is not a reserved matter.
Construction vehicle parking will cause obstructions.	Statutory consultees have not requested a condition in this regard.
The dwelling is being provided with a foul drainage system that would serve a much larger dwelling and this should be taken as being representative of the intentions	Foul and surface water drainage provisions are discussed above. Overprovision cannot be taken to demonstrate any future proposals.
A dwelling of this size is unviable without external storage and a garage which are not shown.	Any future proposal for garaging or storage would have to be considered on its own merits, under the terms of a planning application.
A future proposal to build a garage would undermine the removal of permitted development rights.	Any future proposal for garaging or storage would have to be considered on its own merits, under the terms of a planning application.
The plot has changed shape during the course of the application.	Amendments to the submissions are discussed fully above.

Comment	Officer Response
The adoption of the LDP means that the development should be carefully considered.	The content of the LDP has been the primary consideration.
The scale of the dwelling should be found unacceptable on visual grounds.	The scale of the dwelling is assessed above.
The extent of hardstanding proposed is out-of-keeping with the rural character.	The provision of hardstanding at the site is assessed above.
The submitted plan lacks detailed measurements.	The submitted plans are considered to be adequate, subject to the imposition of conditions in certain respects.
Letters received from the applicant should be treated as additional information that should be the subject of further public consultation.	National Planning Practice Guidance states that the need to undertake further public consultation is at the discretion of the Local Planning Authority.
The applicant states in a supporting letter that there will be 7 new trees planted, but only four are shown.	The content of the arboricultural submissions are discussed fully above.
An assessment should be undertaken in respect of the quality of the trees that are to be affected.	The impact on trees is assessed fully above.
The removal of trees will undermine the Inspectors assessment which sets out that trees are an essential characteristic of the site and contrary to previous statements that trees would not need to be removed.	The impact on trees is assessed fully above.
The proposed replacement planting would be inadequate.	The provision of replacement planting is discussed above.
It has been asked if a site visit has been undertaken.	A site visit has been undertaken.

7.4.6 A further letter was received **in support** of the application which provides similar comments as those made previously.

7.4.7 Letters were received from Bircham Dyson Bell solicitors on behalf of an objector which are summarised and responded to below:

Comment	Officer Response
<b>Letter dated 13/03/18:</b>	
The judgement sets out that the application should be deemed invalid.	This is not consistent with Officers interpretation of the judgement.
The judgement sets out that the development will represent an unacceptable intrusion into the countryside and landscape.	This is not consistent with Officers interpretation of the judgement.
The judgement sets out that the application should be refused.	This is not consistent with Officers interpretation of the judgement.

<b>Comment</b>	<b>Officer Response</b>
All previous correspondence should be considered.	All previous correspondence has been reviewed and summarised as appropriate.
All new documentation should be provided to the objector.	Re-consultation has taken place with documents being available in the conventional manner.
Previous submissions have not been adequately considered.	It is considered that this report addressed this matter.
Any change to the layout of the development would render the application invalid. This is supported by the judgement.	This matter is addressed fully in the above assessment.
A list of dimensions has been provided that demonstrate that the layout of the development is different and reduces the green space available at the site.	This matter is addressed fully in the above assessment.
The impact on and protection of trees was not appropriately considered previously.	This matter is addressed fully in the above assessment. Additional information has been sought, consulted upon and appropriately assessed.
The removal of trees was not forecast when the 2013 application for outline planning permission was considered by the LPA of the Planning Inspector and therefore this conflict should be a reason for the refusal of the application.	A condition relating to the trees at the site was imposed on the outline permission and further conditions are recommended now. The matter of landscaping was reserved.
The 2013 assessment of the proposed dwelling should carry weight and it is noted that the assessment was negative.	Notwithstanding the content of statements made in 2013, it should be noted that the Planning Inspector granted outline consent.
The development is contrary to the LDP, particularly policy S8.	This matter is addressed fully in the above assessment.
<b>Letter dated 20/04/18:</b>	
It is requested that the manner in which comments from the March 2018 letter were summarised is revised.	Noted, but not considered to be a material consideration in respect of the assessment of the proposed development.
It is highlighted that the need exists to provide reasons for decisions.	Noted.
All previous correspondence should be provided to the North West Area Planning Committee.	Request noted, however this is not the conventional process of the Local Planning Authority and all correspondence can be viewed on request.
<b>Letter dated 03/07/18:</b>	
The additional information that has been submitted includes inconsistencies with respect to the trees that are to be retained and the	These matters have been addressed above and it is suggested that conditions are imposed to address the identified variances where necessary.

<b>Comment</b>	<b>Officer Response</b>
position of the proposed soakaway.	
The inconsistencies have prevented reasonable consideration of the proposals by third parties.	It is not agreed that the additional information that has been submitted has prevented reasonable assessment of the proposals by third parties.
The means of calculating the appropriateness of the proposed soakaway is unacceptable.	The soakway calculation methodology has been found acceptable by the Council's Environmental Health Team.
The proposed soakaway and pumping station would be within the root protection area of the development.	This matter can be addressed through the imposition of a condition, without any party being prejudiced.
The loss of trees and the impact on trees at the site would result in the development having an intrusive impact on the countryside.	This matter is addressed in the above assessment.
The replacement tree planting proposed does not provide adequate mitigation for the trees that are to be removed.	Replacement tree planting proposals have been assessed by the Tree Officer and the relevant comments are addressed above.
Proposals for the use of protective fencing and other tree protection measures should be properly assessed and are criticized.	The submissions of the applicant in this regard have been deemed acceptable by the Council's Tree Officer.
It is considered that clarification should be provided as to how trees will be protected in the absence of a Tree Preservation Order.	The trees will be protected through the use of conditions.
It is requested that clarification is provided about how conditions and limitations will be enforced.	Any enforcement will be expected to follow conventional planning enforcement procedures of the Local Planning Authority.

7.4.8 A letter has been received from the applicant responding to some of the contents of the letters of objection.

## 8. **PROPOSED CONDITIONS**

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

REASON: To comply with Section 91(1) of The Town & Country Planning Act 1990 (as amended).

2 Subject to the second paragraph of this condition, the development hereby permitted shall be carried out in complete accordance with the approved drawings Location Plan: 12.2005/M002 dated 10 January 2013; Site Layout / Block Plan Drawing No: 16.09.03 Revision B dated 27 February 2017; Proposed Floor and Roof Layout Plan Drawing No: 16.09.01 Revision A dated 3 February 2017; East 'Street Scene' Elevation Drawing No: 16.09.04 Revision A dated 4 February 2017; Proposed Elevations Drawing No: 16.09.02 Revision A dated 3 February 2017, DB/SUM/01 and DB/SUM/02.

Notwithstanding the details shown on plan 16.09.03 Revision B (dated 27 February 2017) no trees shall be felled or removed unless specifically shown on the Tree Protection Plan (DB/SUM/01)

REASON: To ensure that the development is carried out in accordance with the details as approved.

3 The external surfaces of the development hereby approved shall be constructed of materials and finish as detailed below and retained as such thereafter:-

Dwellinghouse

Roof Tiles: Barrow: 'Brindle Mix' by Wienerberger Ltd

Brickwork: Durham Red Multi by Wienerberger Ltd

Render: White painted finish

Joinery: Timber

Porch frame: Natural oak

Black rainwater goods and downpipes

REASON: To ensure the external materials to be used in construction of the development is appropriate and in keeping with properties in the locality accordance with policy D1 of the Maldon District LDP.

4 The access and parking areas shall be constructed, surfaced, laid out and made available for such purposes in accordance with the approved Drawing: 16.09.03 Revision B dated 27 February 2017 and shall be retained as such thereafter.

REASON: In the interest of highway safety and to ensure appropriate parking is provided in accordance with policies D1 and T2 of the Maldon District LDP.

5 Notwithstanding the provisions of Article 3 of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking or re-enacting that Order) no first floor windows or other form of opening shall be constructed on the northern flank wall of the dwellinghouse hereby permitted without planning permission having been obtained from the Local Planning Authority.

REASON: To protect the amenity of the neighbouring residential properties to the north of the site in accordance with policy D1 of the Maldon District LDP.

6 Prior to the commencement of the development details of the surface water and foul water drainage to serve the development shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be completed before the building is occupied in accordance with the approved details.

REASON: To prevent the undue contamination of the site in accordance with policy D2 of the Maldon District LDP.

7. Notwithstanding the content of the Landscape Plan (DB/SUM/02) hereby approved, prior to the commencement of the development hereby approved, details of the siting and species of a third replacement fruit tree at or adjacent to the west boundary of the site shall be submitted to and approved in writing by the Local Planning Authority. Subject to and including the abovementioned revision, all soft landscaping shown on the Landscape Plan (DB/SUM/02) shall be planted during the first planting season following the occupation of the dwelling hereby approved. If within a period of five years from the date of the planting of any tree or plant that tree or plant, or any tree or

plant planted in its replacement, is removed, uprooted, destroyed, dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted in the same place, unless the local planning authority gives its written consent to any variation.

REASON: To ensure the suitable replacement of trees at the application site in the interest of local visual amenity in accordance with policies D1 and S8 of the Maldon District LDP.

8. Notwithstanding the details shown on plans 16.09.03 Revision B (dated 27 February 2017), details of the precise location and routes of all soakaways, inspection chambers, pumping stations, pipework and other such infrastructure related to foul and surface water drainage shall be submitted to and approved in writing by the Local Planning Authority. The development shall subsequently be undertaken only in full accordance with the approved details.

REASON: In the interests of tree protection at the site in accordance with the NPPF and policies D1 and S8 of the Maldon District LDP.

## **INFORMATIVES**

- 1 This Reserved Matters application: **RES/MAL/16/01475** shall be read in conjunction with Outline Planning Application: **OUT/MAL/13/00118**.
- 2 All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the specifications of the Highway Authority; details shall be agreed before the commencement of works.
- 3 The applicants should be advised to contact the Development Management Team by email at [development.management@essexhighways.org](mailto:development.management@essexhighways.org) or by post to:  
SMO2 - Essex Highways  
Springfield Highways Depot  
Colchester Road  
Chelmsford  
Essex  
CM2 5PU



**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**PLANNING COURT**  
**[2018] EWHC 212 (Admin)**

CO/2648/2017

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 9<sup>th</sup> February 2018

**Before:**

**MR JOHN HOWELL QC**  
Sitting as a Deputy High Court Judge

**Between:**

**THE QUEEN**

On the application of

<b>DAVID PEARL</b>	Claimant
<b>- and -</b>	
<b>MALDON DISTRICT COUNCIL</b>	Defendant
<b>DAVID BROWN</b>	Interested Party

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**Ms Katherine Olley** (instructed by Bircham Dyson Bell) for the **Claimant**  
**Mr Richard Langham** (instructed by Anthony Collins Solicitors LLP) for the **Defendant**  
**Mr John Dagg** (instructed by \*) for the **Interested Party**

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**Approved Judgment**

**Mr John Howell QC:**

1. This is a claim for judicial review of the decision of the local planning authority, Maldon District Council, on April 24<sup>th</sup> 2017 giving approval for matters reserved for their subsequent approval under an outline planning permission for the erection of a single dwellinghouse at Summer House, Back Lane, Wickham Bishops. Permission to make this claim was granted by Lang J.
2. The Claimant, Mr David Pearl, is a local resident who objected to the grant of approval. On his behalf, Ms Katherine Olley contended that the approval impugned was given unlawfully on the grounds (i) that the application for approval was invalid, as it sought approval for a matter, layout, which was not reserved for subsequent approval in the grant of outline planning permission, and as the details for which approval was sought were incompatible with the layout plan in accordance with which the development had to be carried out; (ii) that, in any event, the consultation conducted by the Council on the matters ultimately approved was inadequate; (iii) that there was a failure to take various material considerations into account when deciding to give the approval; and (iv) that the Council had failed to provide any reasons for their decision to do so.

**FACTUAL BACKGROUND**

3. The Interested Party, Mr David Brown, applied to the Council on February 5<sup>th</sup> 2013 for outline planning permission in accordance with the plans and drawings accompanying the application, with some matters reserved for subsequent approval, for a development including the erection of a single dwellinghouse in the grounds of Summer House. The area in the garden of that property to which the application related was said to be 0.14 hectares. The main part of the site ("*the main site area*") at the southern end of the existing garden was broadly square (36m north to south and 35m east to west). The site also included a further, smaller area of land to the north nearer Summer House ("*the additional site area*"). The application sought approval for the access and layout shown on the plans. The matters to be reserved for subsequent approval by the Council were the scale, appearance and landscaping of the development.
4. The Council refused to grant planning permission for the development by a notice dated April 19<sup>th</sup> 2013. However, an Inspector appointed by the Secretary of State allowed the Interested Party's appeal against that refusal in a decision letter dated February 10<sup>th</sup> 2014. The Inspector granted planning permission *inter alia* for the "erection of single dwellinghouse....in accordance with the terms of the application....subject to the conditions in Annex A" of his decision letter.
5. The conditions thus imposed on the grant of planning permission included:
  - "1) Details of the appearance, landscaping and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.

4) The development hereby permitted shall be carried out in accordance with the following approved plans: 12.2005/M001; 12.2005/M002; 12.2005/E101; 12.2005/P201 Rev A; MFA/SH01.

6) Concurrently with the first submission of reserved matters details of the access and parking areas shown on drawing 12.2005/P201 Rev A, including any means of enclosure, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be completed before the building is occupied in accordance with the approved details and that area shall not thereafter be used for any purpose other than access and the parking of vehicles.

7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no garages, extensions or separate buildings (other than ancillary outbuildings not exceeding 10 cubic metres in volume) shall be erected within the site.

8) No development shall take place, nor shall there be any demolition works or site clearance, until there has been submitted to and approved in writing by the local planning authority a scheme of fencing and ground protection to protect the trees/hedges/shrubs, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection during the demolition of the existing building and throughout the course of the development. The development shall be carried out in accordance with the approved scheme.”

6. One of the plans, in accordance with which the development was required to be carried out by condition (4), was Plan P201 Rev A. This was described (and I shall refer to it as) the “*Site Plan*”. This was a small-scale plan at “1:500 @ A4”. The plan showed a rectangular building, plainly the proposed new house, in the main site area. Various measurements were marked on the plan (possibly to assist given its scale). These included the length of the house (north - south), stated as being 15.5 m, and its width (east-west), stated as being 11m. The distance from its western elevation to the western site boundary was shown as 11.5m; the distance from its eastern elevation to the eastern site boundary was shown as 10.8m. The distance from its northern elevation to the adjacent part of the northern boundary was indicated to be 2.7m and that from the southern elevation of the new house to the southern boundary of the site was indicated to be 18.2m. Other distances around the site boundaries were also shown. The Site Plan showed what was plainly intended to be the gravel drive referred to in the application form, from the access at an

adjacent road at the north-eastern end of the additional site area, through that area to the proposed dwelling, coloured beige on the plan. The rest of the site, apart from the proposed new house, was coloured green.

7. The Interested Party applied, on a standard form dated December 20<sup>th</sup> 2016, for approval of appearance, landscaping, layout and scale. It was stated that “all reserved matters except access and siting were dealt with by the planning inspector”.
8. The application listed three drawings that were submitted with the application for approval, numbered 16.09.01 - 16.09.03 (“*the initial plans*”). The area within the site boundary shown on Plan 16.09.03 entitled “Site Layout / Block Plan” (“*the initial site layout plan*”) only included the main site area, although what was envisaged in the additional site area was also shown on that plan. The initial site layout plan showed a building of irregular footprint. One part comprised a three storey house. This alone had a larger footprint than the house on the Site Plan: it had a width of 11.9m and a maximum length of 16.75m. It was also not exactly rectangular in plan form. Instead it comprised two rectangular parts, of which the western part was somewhat shorter than the eastern part at both its northern and southern ends. The other part of the building comprised a projecting single storey structure to the north, containing a utility room and office as well as a garage at its eastern end. The garage, which was about 6m by 6.5m, extended to about 7m east of the main part of the house and to the north of both the main part of the house and the remainder of the single storey structure. The resulting length of the main house and single storey structure (north-south), excluding the garage, was 19.15m. This meant that the building (excluding the garage) was located about 2m, and the main part of the house, over 5m from the northern boundary of the main site area and about 14m from its southern boundary. Its western elevation was 11.5m from the western boundary and the eastern elevation of the main part of the house was about 12m from the eastern boundary. The initial site layout plan showed a “flagstone paved terrace & patio.” The patio was on the western side of the main house and the terrace flanked that elevation and the northern and southern elevations.
9. A Supporting Statement submitted with the application stated that “the appeal dealt with access and layout and it is therefore the objective of this statement to deal with all other matters of consideration together with conditions imposed”. The initial plans were stated to be submitted for approval of details of appearance landscaping and scale under condition (1). It was not suggested that they were submitted for approval of the layout shown. It was also stated, in relation to condition (6), that parking and access were shown on Drawings 16.09.01 and the initial site layout plan together with means of enclosure. The latter drawing was also said to show the trees to be protected for the purpose of condition (8).
10. The Council advertised the application for approval of reserved matters by means of a site notice and letters to interested parties locally.
11. On January 27<sup>th</sup> 2017 the Claimant wrote to the Council contending that the application was invalid as it differed materially from the outline permission granted on appeal and conflicted with the conditions imposed. He pointed out that condition (4) required the site to be developed in accordance with the Site Plan, which showed

the position and footprint dimensions of the proposed building, and that condition (7) prevented construction of garages and extensions. He stated that the application sought approval for layout but that layout was not a matter that had been reserved for subsequent approval and that what was proposed involved substantial changes to what had been approved. He stated that the application included an alteration to the north-east site boundary, an increase of almost 50% over the approved footprint of the building and the addition of a double garage, all of which were in conflict with the conditions imposed<sup>1</sup>. The Claimant also wrote to the Council separately on January 29<sup>th</sup> 2017 objecting to those details shown on the initial plans which in his view were genuinely reserved, namely landscaping, scale and appearance, as well as the access route to the dwelling.

12. On January 31<sup>st</sup> 2017 the Interested Party responded to the Claimant's letter stating that "scale" had been reserved for subsequent approval in the outline planning permission; that, as defined in article 2 of the Town and Country Planning (Development Management Procedure)(England) Order 2015 ("the DMPO"), "scale" included the overall footprint of a building, and that the "layout" (as defined in that article) remained the same.
13. In any event the Interested Party delivered revised plans to the Council on February 6<sup>th</sup> 2017. These were numbered 16.09.01-16.09.04 but were all marked "Rev A". I shall refer to 16.09.03 Rev A as "*the first revised site layout plan*". The revised drawings omitted the single storey structure, including the garage, shown on the initial site layout plan apparently replacing it with a larger terrace. The new dwelling was reduced to two storeys but it retained the same footprint and position as the main part of the building described in paragraph [8] above.
14. The Interested Party also delivered to the Council at the same time a revised part of an application form for approval of reserved matters and a revised Supporting Statement. The revised part of an application form contained answers to some of the questions on the initial form. It stated that approval was sought for appearance, landscaping and scale. It did not now suggest, however, as the initial application form had done, that approval was being sought for layout. It omitted the statement made in the original application form that "all reserved matters except access and siting were dealt with by the planning inspector". The revised supporting statement also changed the description of the site, by adding to its description of the main site area, the statement "Together with an irregular shaped piece of land which forms the access." The first revised site layout plan did not, however, change the site boundary shown on the plan, which as I have mentioned included only the main site area and omitted the additional site area (to which this additional sentence referred). The first revised site layout plan did show, however, the access from the dwelling going through the additional site area to a junction with the adjoining highway (as envisaged in the Site Plan) as well as proposals for fencing, removal of vegetation and the line of the proposed new foul drain in that area. The three revised plans were again stated in the revised Supporting Statement to be submitted to provide details of appearance, landscaping and scale for approval.

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<sup>1</sup> In my judgment condition (7) merely removed permitted development rights, which was the reason given for its imposition by the Inspector. It did not preclude, for example, the incorporation of a garage in the new house permitted

15. The receipt of the revised drawings was advertised by a site notice on February 7<sup>th</sup> 2017 inviting responses by February 21<sup>st</sup> 2017. Letters were also sent on February 8<sup>th</sup> 2017 to interested parties locally informing them that the application had been amended by the submission of revised plans. The notice and letters invited any views on the revised plans to be sent to the Council by February 21<sup>st</sup> (in the case of the site notice) and by February 20<sup>th</sup> 2017 (in the case of the letters).
16. The description of the proposal in the site notice and letters still referred, however, to approval being sought for “layout”. Moreover the revised part of the application form and the revised supporting statement were not put on the Council’s website until March 6<sup>th</sup> 2017. Mr Matthew Leigh, the Council’s Group Manager of Planning Services, stated in a witness statement filed by the authority that, as the documents were delivered directly to the case officer dealing with the application, they were not initially given to the administrative staff who normally receive such documents and then upload them before forwarding them to the relevant planning officer. Mr Leigh also stated that it is normal practice for all documents to be placed in the planning file. It appears, however, that, when the Claimant attended the Council’s offices on February 16<sup>th</sup> 2017 to inspect the case file, he did not find them there.
17. The Claimant wrote two letters to the Council after his visit, both dated February 19<sup>th</sup> 2017, commenting on the revised plans. The Claimant’s first letter contained his comments on matters other than the validity of the application, such as landscaping, scale, appearance and character. His second letter dealing with the validity of the application noted that it still sought approval for layout (which was not a reserved matter) and that, notwithstanding what the Interested Party had stated in his letter dated January 31<sup>st</sup> 2017, the approved layout had been changed even allowing for the amended plans. He drew attention to the fact that the application related only to the main site area which, so he contended, had two main consequences. The first was that the “layout proportions” had been changed, since the exclusion of the additional site area coupled with “a significant increase in the footprint of the house, hard standing and paved area...changes the ratio between the built form and the site as a whole”. The second was that “access to the proposed building is now shown as being via land belonging to a neighbouring property” rather than there being a “direct, independent access onto the public highway”.
18. On February 28<sup>th</sup> 2017 the Interested Party submitted a revised site layout / block plan, 16.09.03 Rev B (“*the second revised site layout plan*”). This replicated the first revised site layout plan, including the line marked “site boundary” round the main site area. But it added a red line around that area and the additional site area. The revision was noted as “red site line added”.
19. The Interested Party’s application was due to be considered by the Council’s North Western Area Planning Sub-Committee on March 6<sup>th</sup> 2017.
20. The members of the Committee were provided with a report on the application by the Interim Head of Planning Services (“*the Officer’s Report*”). The report described the proposal as one for the approval of appearance, landscaping, layout and scale. It recommended approval with a condition requiring the development to be carried out in complete accordance with the initial plans, not the revised plans

that had been submitted. It also proposed a condition relating to the use of the garage that had been shown on the initial plans but deleted from the revised plans. It is not clear when the Officer's Report was written but it refers to one of the revised plans and to a representation received on February 15<sup>th</sup> 2017. In addition to treating the proposal as seeking approval for layout and seeking to incorporate plans that had been superseded into the recommended approval, the report also provided inaccurate statements about the footprint and ridge levels of the proposed dwelling, failed to address other representations that the Council had received by February 15<sup>th</sup> 2017 and made no mention of the Claimant's contention that the application was invalid.

21. On March 1<sup>st</sup> 2017 the Claimant sent a document to members of the Committee giving "examples of errors" and "examples of omissions" in the Officer's Report. On March 2<sup>nd</sup> 2017 the Claimant's solicitors, Bircham Dyson Bell, wrote to the Council complaining about procedural irregularities. They contended that seeking approval for layout (when it was not reserved for subsequent approval) was unlawful. They also contended that the plans initially submitted showed a different layout from that approved and that a different site plan subsequently submitted was itself internally inconsistent.
22. On March 3<sup>rd</sup> 2017 an update on the application was provided to Members of the Committee by the Council's Director of Planning and Regulation Services ("the Members' Update"). This stated that the scheme had been amended to delete the double garage, office and utility room and that its scale had been amended. It indicated that the plans to which the approval recommended should be tied were the latest revised plans but again described the proposal as seeking approval *inter alia* of layout. It corrected the information in the Officer's Report about ridge heights, but not about the footprint of the house proposed. It referred to representations from the Claimant and his solicitors which were said to have been received "since publication of the agenda" but in fact beginning with the letter dated January 27<sup>th</sup> 2017 (that is to say before the Officer's Report must have been completed). It did not summarise the second letter that the Claimant had sent on February 19<sup>th</sup> 2017 which explained why in his view the application was invalid. The report sought to summarise the letter from the Claimant's solicitors, wrongly in their view as they explained in two subsequent e-mails. In those solicitors' view giving consideration to something not reserved was unlawful, whether or not it involved any difference from that originally approved.
23. On March 6<sup>th</sup> 2017, having learnt of the revised application form, the Claimant's solicitors complained that the amendment deleting layout from the matters for which approval was sought at that late stage in March did not allow for proper consultation and had been made after the date at which applications for the approval of reserved matters could be made.
24. In the event, on March 6<sup>th</sup> 2017, the Committee delegated the power to decide on the application to the Interim Head of Planning Services in consultation with three councillors. It appears that they were informed that the revised application form and supporting statement had been received on February 6<sup>th</sup> 2017 but not made available then on the Council's website by mistake.

25. As the Council had no Head of Planning Services, his powers fell to be exercised by the Council's Chief Executive. On April 20<sup>th</sup> 2017 she received a report on the application ("the Report to the Chief Executive"). This again described it as one seeking approval *inter alia* for "layout". It stated that the Council's Legal Services considered that there was no need to re-consult on the application and that only one of the three members consulted had responded to a request for his views, stating that he was "happy for you to grant consent". The Chief Executive accepted the recommendation that the application "be granted planning permission subject to the conditions contained within the original committee report and the 'Members Update'". There is no evidence that the Chief Executive was provided with either of those documents or any further substantive information about the application.

26. On April 24<sup>th</sup> 2017 the Council issued a decision notice signed by the Chief Executive. It referred to the proposal as a "reserved matters application for the approval of appearance, landscaping and scale", but not layout, and it gave approval, subject to conditions, for

"the matters and details as shown on the submitted drawing(s) referenced 12.2005/M002, 16.09.01 REV A, 16.09.02 REV A, 16.09.03 REV B, 16.09.04 REV A, which were reserved for subsequent approval in the planning permission granted on appeal on 10 February 2014 in respect of Outline Application No.OUT/MAL/13/00118,Appeal ref. APP/X1545/A/13/2201061".

No statement of the reasons for the decision was provided

## THE RELEVANT STATUTORY FRAMEWORK

27. Planning permission may be granted subject to conditions which require the subsequent approval of certain matters by a planning authority.

28. Specific provision is made in, and under, the Town and Country Planning Act 1990 ("the 1990 Act"), however, for the grant of an "outline planning permission". Section 92 of the 1990 Act provides that:

" (1)....."outline planning permission" means planning permission granted, in accordance with the provisions of a development order, with the reservation for subsequent approval by the local planning authority... or the Secretary of State of matters not particularised in the application ("reserved matters").

(2) Subject to the following provisions of this section, where outline planning permission is granted for development consisting in or including the carrying out of building or other operations, it shall be granted subject to conditions to the effect—

(a) that, in the case of any reserved matter, application for approval must be made not later than the expiration of

three years beginning with the date of the grant of outline planning permission; and

- (b) that, in the case of outline planning permission for the development of land in England, the development to which the permission relates must be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved”.

29. The scope of what may constitute an “outline planning permission” is narrowed by the DMPO in accordance with which it must be granted. Such a permission must be one “for the erection of a building” (rather than any other form of development) and one which requires “the subsequent approval of the local planning authority with respect to one or more reserved matters”: see article 2 of the DMPO. For this purpose article 2 provides that:

“reserved matters” in relation to an outline planning permission, or an application for such permission, means any of the following matters in respect of which details have not been given in the application—

- (a) access;
- (b) appearance;
- (c) landscaping;
- (d) layout; and
- (e) scale”.

30. The relevant legislation imposes few requirements governing the application for, and approval, of such reserved matters (in marked contrast with the primary legislation governing applications for planning permission: see *R (Holborn Studios Limited) v the Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin) at [8]-[20], [64]-[86]).

31. Article 6 of the DMPO provides that:

“An application for approval of reserved matters—

- (a) must be made in writing to the local planning authority and give sufficient information to enable the authority to identify the outline planning permission in respect of which it is made;
- (b) must include such particulars, and be accompanied by such plans and drawings, as are necessary to deal with

the matters reserved in the outline planning permission..’

32. Where such an application is lodged, the authority must send the applicant an acknowledgement of the application and notify the applicant as soon as reasonably practicable if they consider it to be invalid. For this purpose it is invalid if it is not valid as defined in article 34(4) of the DMPO, for example, because it does not comply with the requirements of article 6: see article 11(2) and (5) and article 34(4). A copy of the application together with any accompanying plans or drawings must be entered in the register of planning applications (which, when it is kept using electronic storage, may be made available for inspection on the authority’s website) within 14 days of receipt: see article 40(3)(a), (10) and (14).
33. The DMPO itself contains no requirement for an applicant or for the local planning authority to give others notice of the application<sup>2</sup>. Article 34(8) provides that “a local planning authority must provide such information about [an application for approval of reserved matters].....as the Secretary of State may by direction require; and any such direction may include provision as to the persons to be informed and the manner in which the information is to be provided.” I have been referred to no such direction.
34. An application which complies with article 6 (together with any relevant fee) is a “non-validated application” on which the authority is required to give the applicant their decision within 8 weeks from the date on which it is received or such extended period as may be agreed: see article 34(1), (2)(b) and (5) of the DMPO.
35. Planning permission may also reserve matters other than the defined “reserved matters” by condition for subsequent approval. Applications for such approval have to comply with similar requirements as a reserved matters application and be determined within a similar period: see article 27 of the DMPO.
36. Where the decision on an application for the approval of “reserved matters” or of other matters requiring their approval under a condition is taken by the authority themselves or by one of their committees or sub-committees, there is no statutory requirement for reasons to be given for the decision. The Openness of Local Government Bodies Regulations 2014 (“*the 2014 Regulations*”), however, require an officer to make a written record of certain decisions taken, “along with reasons for the decision” and “details of alternative options, if any considered and rejected”, and thereafter to make that record and any background papers available for inspection on the authority’s website and its office, in each case as soon as reasonably practicable: see regulations 6 to 8 of the 2014 Regulations. The decisions to which these requirements apply include (by virtue of regulation 7(2),

“A decision...if it would otherwise have been taken by the relevant local government body, or a committee, sub-committee of that body or a joint committee in which that body

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<sup>2</sup> Other than when the application is to a county planning authority or national park authority who have to inform certain other authorities.

participates, but it has been delegated to an officer of that body either—

- (a) under a specific express authorisation; or
- (b) under a general authorisation to officers to take such decisions and, the effect of the decision is to—
  - (i) grant a permission or licence; [or]
  - (ii) affect the rights of an individual;.”

37. In this case it is unnecessary to consider whether a decision on an application for reserved matters approval may “affect the rights of an individual” or whether an approval given involves the grant of “a permission or licence”. The decision in this case was taken under a specific express authorisation. Accordingly it is accepted by the Council that the Chief Executive was required to produce a written record, including her reasons for her decision. As I held in *R (Sasha and others) v Westminster City Council* [2016] EWHC 3283, [2017] PTSR 306, the reasons to be provided can be briefly stated but they must be intelligible and deal with the substantial points that have been raised, which may include giving reasons for rejecting any objections raising such points: see at [33]-[38] applying *Westminster City Council v Great Portland Estates plc* [1985] AC 661 per Lord Scarman at p673. These may have to include disclosing how any substantial issue of law was resolved.

#### **WHETHER THE CHIEF EXECUTIVE’S DECISION WAS LAWFUL ASSUMING THAT THERE WAS AN APPLICATION WHICH COULD LAWFULLY BE CONSIDERED**

38. It is convenient to consider first the Claimant’s allegations that the decision impugned was unlawful on the ground (a) that there was a failure to take various material considerations into account and (b) that no reasons were provided for the decision.

39. In considering these complaints I shall assume that there was an application for approval of reserved matters that the Chief Executive, who took the decision impugned, could lawfully consider.

40. On behalf of the Claimant Ms Olley drew attention to the representations that the Claimant had made about the removal of trees at the site and damage to them that had already occurred, in some cases contrary to planning conditions previously imposed; about the proposed loss of further trees on the site boundaries which the Inspector had recognised as constituting part of the main quality of the site and which were protected by an existing condition; and about the failure to comply with the assurance in the access and design statement, which had accompanied the application for outline planning permission, that the development could be accommodated without the removal of any existing trees or other vegetation. She submitted that such representations had not been adequately reflected, much less properly addressed, in the Officer’s Report and the Members’ Update and that the

failure to impose any tree related conditions on the approval indicated that the representations had not been taken on board. She further contended that no reasons had been provided, as required, for rejecting the Claimant's representations on these and other matters such as the validity of the application.

41. On behalf of the Council, Mr Richard Langham submitted that the relevant question in relation to trees was whether the landscaping proposals on the second revised layout plan were acceptable. The historical matters on which the Claimant relied were matters to which no reasonable authority could have given any weight and that, if the trees shown to be retained required protection after the development had been carried out, that was a matter to be dealt with by making a Tree Preservation Order, not by the imposition of any condition. The condition imposed on the outline application, condition (8), to protect the trees to be retained during development, was as far as it was proper to go. But in any event, so he submitted, the Claimant's concerns were in fact summarised in the Members' Update.
42. In his skeleton argument Mr Langham had submitted that the decision had been taken by the Chief Executive "in the light of the assessment made in" the Officer's Report and the Members Update and "the legal advice obtained after 6 March" as a result of which it could not be contended that the approval was given on April 24<sup>th</sup> 2017 "in ignorance of any material consideration relating to the validity or otherwise of the application". He further contended that it was possible to infer from the reports that the reason for the decision was simply that the proposed details were acceptable and that there was no need for any further statement of reasons about the validity of the application as the Claimant knew of the amended application form "and thus why [the Council] had a valid application before it".
43. During the course of the hearing, however, Mr Langham produced a copy of the Report to the Chief Executive. This did not attach either the Officer's Report or the Member's Update. There is no evidence that the Chief Executive had those reports when taking her decision and Mr Langham did not suggest that she did. The Report to her did not attach the application documents or the plans and drawings that she was being recommended to approve. Nor did the Report describe them or the representations made in relation to them or address the issue of the validity of the amended application. The only substantive information it contained (apart from the reference to the resolution delegating the decision) were the statements that the Council's Legal Services did not consider that there had to be further consultation on the application and that the one Councillor consulted who had replied had said that he was happy for consent to be granted. In effect it would appear, therefore, that all the Chief Executive in fact did was to endorse the recommendation the report contained, made for the reasons which were not explained in the Report to her, to grant "planning permission" subject to conditions in ignorance of details of the application. She signed the decision notice two days later.
44. There is, of course, no objection to the person to whom the exercise of a discretion has been entrusted obtaining advice from others or relying on a fair summary provided by others of matters that may need to be taken into account when reaching a decision. But, in my judgment, the valid exercise of any statutory discretion requires the person entrusted with it to take into account herself those matters that, in the circumstances, the decision-maker must consider, and then to decide on the

merits in the light of them, how the discretion entrusted to her should be exercised. But in this case the Chief Executive failed to exercise the discretion delegated to her, to determine whether or not approval should be granted for any of the reserved matters described in the revised plans, on their merits and in the light of representations received. She was not in a position to do so. Nor was she in a position to resolve any issue about the validity of the amended application. At most she simply endorsed a recommendation given for reasons that were not disclosed to her. Her decision was accordingly unlawful.

45. It follows that it is unnecessary to consider whether or not the Officer's Report and the Members Update sufficiently described the Claimant's objections relating to the validity of the application or those relating to trees. Even had they done so, the Chief Executive had no regard to them. Likewise it is unnecessary to determine whether or not the Claimant's objections relating to trees were ones to which no reasonable person could have attached any weight whatsoever, so that it would be immaterial whether or not they were taken into account. Had I had to do so, I would not have been persuaded by Mr Langham's submissions on this point given, for example, the absence of any reasoned explanation of why trees that would be lost were of no materiality nor was I persuaded by his submission that imposing any condition designed to secure the retention of those trees shown to be retained after the completion of the development would not have been proper.
46. It is also common ground, as I have explained in paragraph [36] above, that the Chief Executive was required to produce a written record of the decision taken along with the reasons for the decision. She did not do so. The notice of the decision contains no such statement of reasons. The Report to the Chief Executive was admissible (and should have been produced earlier than it was in accordance with the Council's duty of candour) to explain the basis on which the decision impugned was taken. It is unnecessary to consider whether or not it is admissible for the purpose of providing, or inferring, what the reasons for the decision were given the statutory obligation to produce a record of them, in the light of the principles in *R v Westminster City Council ex p Ermakov* [1996] 2 All ER 302 at p 316-7, as the report does not in any event contain any. Accordingly the Council has also failed to comply with its obligation to provide a written record of the decision including the reasons for it.
47. In these circumstances, and having had regard to section 31(2A) of the Senior Courts Act 1981, in my judgment the decision impugned must be quashed, even if it is assumed that the amended application for approval of reserved matters was one that the Chief Executive could lawfully consider.

#### **WHETHER THE AMENDED APPLICATION FOR THE APPROVAL OF RESERVED MATTERS COULD LAWFULLY BE CONSIDERED**

48. Much of the argument during the hearing of this claim was directed at the question whether there was any valid application for reserved matters that the Chief Executive could determine. Both the Council and the Interested Party invited me to consider that issue, even if the decision impugned was otherwise flawed. This invitation was understandable given that, if the decision impugned is simply quashed, the arguments, that there was no valid application that may be determined,

adduced by the Claimant on this claim might be raised again when the application falls to be reconsidered by the Council. That would be pointless if it is clear that there is no valid application that may be considered.

*i. submissions*

49. On behalf of the Claimant, Ms Olley submitted that there was no in-time application for reserved matters approval and that the outline planning permission has accordingly lapsed. In this case, given the conditions imposed on the grant of outline planning permission, any such application had to be made by February 10<sup>th</sup> 2017.
50. She submitted that an application for reserved matters cannot alter the nature of the permission granted in outline or contain matters not actually reserved at the outline stage: see *Heron Ltd v Manchester City Council* [1978] 1 WLR 937; *Chalgary Limited v Secretary of State for the Environment* (1977) 33 P&CR 10. As the application in this case had sought approval for layout, which was not a reserved matter, it could not be lawfully entertained. Ms Olley further submitted that the layout on the initial site layout plan and first revised site layout plan was not the same as that in the Site Plan, relying in particular on the points made in the Claimant's second letter to the Council on February 19<sup>th</sup> 2017 (summarised in paragraph [17] above). Whether that is so is not, so she submitted, a matter of pure law.
51. She further submitted that the various reports have not addressed the Claimant's representations on validity and no reason was given for dismissing them. Although the evidence was now that an amended part of the application form had been delivered to the Council on February 6<sup>th</sup> 2017 and the initial revised plans had been received before February 10<sup>th</sup> 2017, it was notable that the proposal that was to be considered was described in the Officer's Report, the Members' Update and the Report to the Chief Executive as one seeking approval *inter alia* for layout. Moreover the Council had not invited further representations once it had disclosed the fact that it had received an amendment to the application form or the second revised site layout plan.
52. On behalf of the Council Mr Langham submitted that the application was either valid or it was not and that the Council was not exercising any judgment which needed to be explained. He contended that, with the receipt of the amended page of the application form and of the first revised site layout plan, the Council had before it an application for approval of reserved matters in relation to appearance, landscaping and scale which satisfied article 6 of the DMPO. The Council immediately consulted on the revised plans when they were received and the Claimant was able to comment on their merits (as he did). The fact that the Claimant may only have learnt of the amendment to the application form and about the second revised layout plan thereafter was immaterial. The Claimant had plenty of time thereafter before the decision was taken by the Chief Executive to make further representations in the light of them but there is no suggestion as to what further representations (if any) he wanted to make after his solicitor's email on March 6<sup>th</sup> 2017.

53. On behalf of the Interested Party Mr John Dagg submitted that the original application for reserved matters was valid. There was an unfortunate slip in seeking approval in the application form for “layout” but the Supporting Statement that accompanied it clearly stated, correctly, what the application was for and what particular drawings were being submitted for approval of which reserved matters. The original application was one that was within the ambit of the outline permission and in accordance with the conditions subject to which it had been granted. It was within the ambit of that permission: the footprint of the new house was not constrained given that its scale (which includes length and width) had been reserved for subsequent approval.

54. In any event, so Mr Dagg submitted, there is no bar to the amendment of an application for approval of reserved matters. That was done on February 6<sup>th</sup> 2017 correcting the mistaken tick in the original application form (which had indicated that approval for “layout” was being sought) and substituting a revised Supporting Statement and revised plans. That amended documentation constituted a valid application.

55. It was irrelevant, so Mr Dagg contended, that the detailed footprint of the new house was different from the “illustrative” rectangle on the Site Plan. That plan went only to “layout”, not to “scale”. The second revised layout plan merely showed the site boundary correctly: the position and scale of the new house and the landscaping and tree details were the same as on the first revised site layout plan. The Claimant had ample opportunity before and after the meeting of the Committee to comment on the proposals: he was not prejudiced if there had been any failure to provide information on the part of the Council.

*ii. the substantive limitations on applications for approval of reserved matters and their amendment*

56. An application for approval of a “reserved matter” “must be within the ambit of the outline planning permission and must be in accordance with the conditions annexed to the outline planning permission...If the applicant desires to depart in any significant respect from the outline permission or the conditions annexed to it, he must apply for a new planning permission”: see *Heron Limited v Manchester City Council* [1978] 1 WLR 937 CA per Lord Denning MR at p944c-d and Orr LJ at p946g; *R v Hammersmith and Fulham London Borough Council ex p Greater London Council* (1985) 51 P&CR 120 CA per Glidewell LJ at p127 and p132. Whether or not the application is within the ambit of the outline planning permission or departs from the requirements of any condition may not depend, however, merely on the interpretation of the outline planning permission and application of reserved matters themselves. Their comparison may also involve questions of planning judgment: see *R v Hammersmith and Fulham London Borough Council ex p Greater London Council* supra per Glidewell LJ at p132.

57. An application for approval in respect of any “reserved matters”, however, may be made more than once and may cover only one or some of the matters reserved for subsequent approval or only part of the area which was the subject of the grant of outline planning permission: see *Heron Limited v Manchester City Council* supra per Lord Denning MR at p943g-944b, per Orr LJ at p946g, per Bridge LJ at pp946h-

947d. Moreover not all the particulars plans and drawings that may be necessary to deal with the application need to accompany the application itself for it to constitute a lawful application: they may be submitted later: see *Inverclyde District Council v Lord Advocate* (1982) 43 P&CR 375 per Lord Keith of Kinkel at p396.

58. In *Inverclyde District Council v Lord Advocate* supra the Appellate Committee accepted that an amendment of an application for approval of a reserved matter was permissible generally at any stage but that there were two limitations on this freedom to amend after the expiry of the period limited for such applications: (i) an application which dealt with some only of the specified reserved matters cannot be amended after that date to deal with another specified reserved matter; and (ii) no amendment would be made which would have the effect of altering the whole character of the application so as to amount in substance to a new application: see per Lord Keith at p397. However, subject to those limitations, an application which dealt with a reserved matter “to some extent” may still be amended after that date providing some further or some different details in respect of that reserved matter: see per Lord Keith at p396-7; *R v Newbury District Council ex p Stevens and Partridge* (1992) 65 P&CR 438 per Roch J at p449-450. As Lord Keith of Kinkel stated, in his speech in *Inverclyde District Council v Lord Advocate* supra with which the other members of the Appellate Committee agreed, given the absence of provisions governing how applications for approval of reserved matters are to be dealt with, “this is not a field in which technical rules would be appropriate”: see at p397.

*iii. whether the application for reserved matters as amended was substantively valid*

59. Ms Olley submitted that the mere fact that the application for approval in this case was stated to be for approval of the layout shown on the initial site layout plan of itself rendered the application for approval invalid. In my judgment that is not so. The fact that an application may include matters for which approval cannot be sought does not of itself invalidate what may otherwise constitute a valid application if the addition is severable.

60. Thus, in *Inverclyde District Council v Lord Advocate* supra, the outline planning permission contained a condition that an identified part of the site, substantial in extent, should not be developed for housing but the lay-out plan submitted in the application for approval of reserved matters showed the proposed residential development as extending over that area. At the Inquiry held into the non-determination of that application, the applicant offered to restrict the development so as to exclude that area and the reporter thought it would be proper to grant the application on that basis subject to a minor adjustment of the proposed layout. The House of Lords held that the inclusion of the hatched area for residential development in the application did not invalidate it as an application for approval of reserved matters in respect of the remainder of the site: see per Lord Keith at p395. Lord Keith justified that conclusion on the basis that, notwithstanding what the application had said, it should be regarded, in relation to the hatched area, as a fresh application for planning permission. The severable, remaining part was a valid application. But in my judgment the result can equally and more simply be justified by the reasoning of Lord Wheatley (the then Lord Justice-Clerk) in the Inner House. Although in his view the original application fell outwith the ambit of the outline

planning permission, he could “not see why an application should not be capable of restriction so long as it then falls within the ambit of the outline planning permission”: see at p383. Given, as Lord Keith recognised (at p397) that amendments may be made to applications for reserved matters and that “this is not a field in which technical rules would be appropriate”, in my judgment to hold otherwise would be overly technical. Such a severable application would meet the requirements of article 6(b) of the Development Management Procedure Order (quoted in paragraph [31] above) and be a valid application as defined for the purpose of that Order, even if it contained other matters that go beyond the matters reserved for subsequent approval.

61. *Chalgary Limited v Secretary of State for the Environment* *supra*, on which Ms Olley relied, by contrast, involved an application for approval of reserved matters which was simply inconsistent with the grant of outline planning permission. The permission in that case was one which required access to the proposed development to be taken through an existing field gate. The layout plan submitted with the application for reserved matters showed an estate road with access onto a classified road where there was no existing access. Slynn J held that the Secretary of State was entitled to decline to consider the appeal against the refusal to approve the plan which was plainly inconsistent with the terms of the permission: see at p17 and p25. There was no suggestion that the application was severable.
62. In this case, on February 6<sup>th</sup> 2017, before the expiry of the period for making applications for approval of reserved matters, the Interested Party deleted the reference to “layout” (in the part of the form which identified what approval was being sought for) and substituted new plans for those initially submitted. These restricted the scope of the application and the extent of the footprint of the new house. Ms Olley did not contend that such amendments to the application as those documents effected could not be made competently<sup>3</sup> if the layout in the first revised site layout plan was in accordance with the layout in the Site Plan<sup>4</sup>. Ms Olley drew attention, however, to the fact that the proposal was subsequently described in the Officer’s report, Members’ Update and the Report to the Chief Executive as seeking approval for layout. That description was undoubtedly an error. It is plain that the Interested Party had amended his application and in fact the notice of the decision on April 24<sup>th</sup> 2017 did not purport to give approval for the “layout” shown on the plans: it purported to give approval only for appearance, landscaping and scale.
63. In my judgment the substantive question is whether the development in accordance with the first revised site layout plan submitted by the Interested Party on February

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<sup>3</sup> She raised issues about the consultation conducted about them which I shall consider below.

<sup>4</sup> While it would no doubt have been simpler had a new form been substituted for the whole of the original form, in my judgment the amended part taken with the Revised Planning Statement and new drawings would also by themselves have constituted an application for the approval of reserved matters meeting the requirements of article 6(a) and (b) of the Order if the layout shown in the drawings was not in conflict with the Site Plan. To be valid the application would have had to have been accompanied by the appropriate fee. However, had the Council treated the initial application as invalid, it would have had to refund the fee originally submitted: see regulation 3 of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012. As no argument was addressed to me on these points, I express no view on whether the Council could have treated the documents submitted on February 6<sup>th</sup> 2017, or whether they should be regarded, as being an application themselves if the Interested Party’s initial application fell to be treated as invalid.

6<sup>th</sup> 2017 would be in accordance with the layout on the Site Plan (so that it would be consistent with the requirements of condition (4) imposed on the grant of outline planning permission). Indeed, if it would be, it would have been immaterial had approval been sought, or given, for the “layout” shown on it.

64. The first revised layout plan did not extend to the whole of the site to which the outline planning permission related. Given that an application for reserved matters can relate to part only of that area (as I have explained), the application was one that could nonetheless be entertained provided that what was proposed on the part of that site to which the application related was in accordance with the Site Plan. In my judgment this is of significance when considering the Claimant’s objections set out in his letter dated February 19<sup>th</sup> 2017 and repeated by Ms Olley (which I have summarised in paragraph [17] above).
65. The access to the new house as shown within the main site area is not in conflict with that on the Site Plan. The details shown in relation to the access outside the main site area (to which the application for approval related) in the additional site area showed how the access could be continued to a junction on the public highway as envisaged on the Site Plan.
66. The other objection, that the ratio between “built form” and the site as a whole had been changed, is also affected by recognition that an application may be made for part only of the site to which the outline planning permission related. The comparison which the Claimant drew was between (a) the ratio between the footprint of the proposed dwelling in the Proposed Site Layout Plan and the site to which the permission related and (b) the ratio between “the footprint of the house, hard standing and paved areas” shown on the first revised site layout plan and the area to which it related. Assuming that any ratio involving such “built form” is relevant, however, in my judgment the comparison ought to be between the ratio of “built form” and the main site area on the Site Plan and the initial revised plan.
67. Before considering the objection based on this comparison, however, it is necessary to consider what condition (4), that “the development hereby permitted shall be carried out in accordance with” the Site Plan, involves. At first sight the first revised site layout plan would appear to be in conflict with that Plan. The Site Plan shows a dwelling with a specified length and width located at certain specified distances from various boundaries of the main site area. The first revised site layout plan shows a dwelling of a different length and width located at different distances from the various boundaries of the main site area: see paragraphs [6] and [8] above. Ms Olley has not contended, however, that any such differences of themselves meant that the application for approval was invalid. That is perhaps understandable given (a) that condition (4) has to be construed as part of the permission which was granted in accordance with the application under which that plan was submitted to determine “layout”, but which reserved “scale”, for subsequent approval and (b) the relevant definitions of those terms for this purpose.
68. Article 2 of the DMPO provides that:

““layout” means the way in which buildings, routes and open spaces within the development are provided, situated and

orientated in relation to each other and to buildings and spaces outside the development;

.....

“scale”..... means the height, width and length of each building proposed within the development in relation to its surroundings”.

69. Scale is concerned with the size of a building, its three-dimensional shape, and its relationship to its surroundings: see *MMF (UK) v Secretary of State for Communities and Local Government* [2010] EWHC3686 (Admin), [2011] JPL 1067, per Simon J at [11]; *Crystal Properties (London) Limited v Secretary of State for Communities and Local Government* [2016] EWCA Civ 1265, [2017] JPL 594, per Lindblom LJ at [13] and [31]. “Layout” is concerned with the physical arrangement of buildings, routes and open spaces within the site and with buildings and spaces outside the site<sup>5</sup>. In this context<sup>6</sup> “open space” refers in my judgment to a space free of buildings (as conventionally understood) as does the term “space” in the latter part of the definition of “layout”.
70. Given that “layout” can be determined while leaving the “scale” of a building proposed for subsequent approval, however, it must follow that a change in the width or length of a building that appears in the approved “layout” (and thus in its distance from any boundary of the site in respect of which outline planning permission has been granted and the resulting change in residual amount of open space within the site) *may* not conflict with the inter-relationships determined by the approved layout of the development. If it inevitably did, “scale” as such could not be reserved for subsequent approval, and “layout” determined, when planning permission is granted: only “height” could be reserved for subsequent approval when layout is determined.
71. In this case “height” was not all that the application for planning permission, or the planning permission itself, reserved for subsequent approval.
72. But, even if what was reserved for subsequent approval was not limited (in relation to “scale”) merely to the “height” of the dwellinghouse, it does not follow that an approved layout may not constrain the length, width and precise siting of any building that may be erected in accordance with it. A building that had a significantly larger footprint or whose precise siting in relation to other features was significantly different from the approved layout plan, for example, might conflict with the arrangement of buildings, routes and open spaces within the site shown on that plan and with buildings and spaces outside it. Even if the scale of a building or buildings is reserved for subsequent approval, therefore, that cannot justify a

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<sup>5</sup> Given that the outline planning permission is for the erection of a building or buildings, the “development referred to in the definition of layout must be a reference to the area the subject of the proposed development, namely the application site area.

<sup>6</sup> Given the context it would be absurd to take “open space” to mean what it is otherwise defined to mean in section 336 of the 1990 Act, namely as “any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground”.

material departure from the layout in accordance with which the development must be carried out. Whether or not an application for approval of reserved matters involved such a material departure in the circumstances would involve a matter of planning judgment for the local planning authority.

73. The Claimant stated in his first letter on February 19<sup>th</sup> 2017 that, when dealing with the scale of the proposed new house shown on the first revised site layout plan, that it had “a similar sized footprint” to that on the Site Plan. He relied in his second letter on his comparison of “built form” on the “significant overall increase in the footprint of the house, hard standing and paved areas”. In his view much of the “green area” shown on the latter plan would be covered over by the construction around three sides of the proposed house of extensive areas of “block paving, stone flag paving and a raised terrace”.

74. In considering the significance of the “flagstone paved terrace and patio” shown on the first revised site layout plan (but not the Site Plan), it is necessary to bear in mind that one of the matters reserved for subsequent approval (which that Plan did not determine) was “landscaping”. Article 2 of the DMPO provides that:

“landscaping”, in relation to a site or any part of a site for which outline planning permission has been granted...means the treatment of land (other than buildings) for the purpose of enhancing or protecting the amenities of the site and the area in which it is situated and includes—

- (a) screening by fences, walls or other means;
- (b) the planting of trees, hedges, shrubs or grass;
- (c) the formation of banks, terraces or other earthworks;
- (d) the laying out or provision of gardens, courts, squares, water features, sculpture or public art; and
- (e) the provision of other amenity features”.

75. In my judgment the formation of a “flagstone paved terrace and patio” may properly be regarded as the treatment of land for the purpose of enhancing the amenities of the site for the occupants of the proposed new house and thus something capable of being approved as part of the “landscaping” of the site. There is no reason why an amenity feature may not have a hard surface (as, for example, a garden path or a tennis court may do). Moreover the fact that an area is hard surfaced would not mean that it ceased to be “open space” (as opposed to a building) when considering the “layout” of the proposed development: see paragraphs [68] and [69] above.

76. In my judgment, therefore, the question in respect of the first revised site layout plan is whether the increased footprint, and different location for the house in relation to the boundaries of the main site area, proposed resulted in an arrangement of buildings, routes and open spaces within the site and with buildings and spaces

outside it that involved a material departure from the arrangement shown on the Site Plan. The answer to that question involves a matter of planning judgment.

77. Such a judgment might be informed by a comparison between the ratio of the footprints of the house shown on each plan to the main site area. But it would not necessarily be determined by it. It might also need to consider the significance to be attached to the various dimensions marked on the Site Plan in the context of the nature of the development, the site to which the outline planning permission related and its surroundings.
78. In the Claimant's Summary Reply to the Council's Summary Grounds at [12] and [20], he contended that the layout in the two plans was not the same and it was not reasonable to assert that they were. In its detailed grounds the Council asserted that the layouts were the same or "alternatively" that it was a matter for the Council's judgment whether the differences in length and width of the buildings shown on the plans went to the scale, as opposed to the layout, of the development. No explanation was provided for the first assertion and no explanation of why the differences might not go to layout as well as scale. In his witness statement Mr Leigh stated that officers considered that the layout shown on the first revised plan "was the same as that" on the Site Plan. But he provided, however, no reasons explaining the basis for that judgment.
79. Given that the question whether the proposed layout on the first revised site layout plan was in conflict with that shown on the Proposed Site Layout Plan was a substantial point raised by the Claimant in his representations, in my judgment the Council were obliged to provide reasons for rejecting his contentions on that issue and to explain why they were not in conflict (if that was indeed the Council's view formed by someone with the delegated authority to do so). No reasons were provided on this or other issues as required (as I have explained). Given that the decision granting approval is to be quashed in any event, I prefer to express no view on whether the Council could lawfully have reached the conclusion (if they did) that the layouts were not in conflict in the absence of any reasoned explanation of the decision by the person authorised to take it. Such a statement of reasons may have to be given when the matter is reconsidered.
80. The second revised site layout plan was submitted by way of amendment to the application for reserved matters after the expiry of the period within which such applications were required to be made by condition (2) imposed on the grant of outline planning permission. In my judgment it is clear that the red line which this revision introduced was intended to mark the revised boundary of the site to which the application related (as the note on it indicated) so as to include the additional site area. Unfortunately the line on the first revised plan identified as the site boundary was not removed on the second. But, given the apparent conflict in its location in relation to the additional site area, in my judgment the site boundary should be taken to be that shown as last added to the drawing, namely the red line, as that plainly indicates the intended boundary. The details within the additional site area thus included within the application were identical to those shown outside the site boundary in this area on the first revised layout plan and those within the main site area.

81. In my judgment this was an amendment that was validly made notwithstanding the expiry of the time limit for making applications. All the details shown within the additional site area related to reserved matters that were already dealt with “to some extent” in the application before the expiry of the limit: see paragraph [58] above<sup>7</sup>.
82. Accordingly in my judgment the question whether the application for approval of reserved matters as amended was valid depends on whether the Council consider, not unreasonably, that the “layout” shown on the second revised plan is not in conflict with the “layout” shown on the Site Plan in accordance with which the development permitted must be carried out. That will require consideration of whether the increased footprint and different location for the house proposed resulted in an arrangement of buildings, routes and open spaces within the site and with buildings and spaces outside it that involved a material departure from the arrangement shown on the Site Plan. The answer to that question involves a matter of planning judgment.

*iv. whether the application for approval as amended complied with any procedural requirements*

83. As explained above, there is no requirement in the DMPO itself that anyone need be given notice of an application for approval of reserved matters and invited to make any representations thereon. No direction under article 34(8) of that Order, no policy of the Council, whether contained in any Statement of Community Involvement or otherwise, and no practice of the Council requiring such notice to be given was drawn to my attention by the parties. However it is well established that, whether or not consultation is a legal requirement, if it is embarked on, it must be carried out properly by a public authority and the applicable principles of fairness are no different from those that apply if the consultation is statutory: see eg *R. v North and East Devon Health Authority ex p Coughlan* [2001] QB 213 per Lord Woolf MR, giving the judgment of this court at [108].
84. In this case the Council embarked on a process of consultation. They posted a site notice and informed interested parties locally including the Claimant that the application for reserved matters had been made and invited representations. They did so again when they posted a further site notice on February 7<sup>th</sup> 2017, and informed such parties including the Claimant on February 8<sup>th</sup> 2017, that revised drawings had been submitted.
85. Unfortunately the revised proposal appears to have been described on the site notice and in such letters as still involving an application for approval *inter alia* of layout. Moreover the amended part of the application form, the revised supporting statement and the second revised layout plan were not placed on the Council’s website until after the time for making representations had expired. The Claimant was not aware of all of these additional documents until March 6<sup>th</sup> 2017.
86. Ms Olley submitted that, until March 6<sup>th</sup> 2017, there was nothing to put the Claimant or other interested parties on notice that layout was not to be considered as

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<sup>7</sup> It also follows that a further application clarifying the area to which the application relates could still be submitted after the decision impugned is quashed if I am wrong about the effect of the revision.

part of the application. Although the decision was deferred on March 6<sup>th</sup> 2017, the Council failed to invite further representations.

87. On behalf of the Council Mr Langham submitted that the Claimant had been able to comment on the revised proposals on their merits in detail and had done so and the fact that the Claimant was unaware of the amendment to delete “layout” from the list of matters for which approval was sought and of the second revised plan until after the period for making representations had expired, was irrelevant. The deletion of “layout” did not cause the substantive contents of the drawing on which he was able to comment to change nor did the extension of the site boundary shown on the second revised layout plan. There was nothing that he could usefully have added on the merits. The fact that he and his solicitors had made representations after the period for making them had expired showed that they did not feel inhibited from doing so for that reason, and, had they any further representations to make, they could have made them at any time after March 6<sup>th</sup> 2017 before the Chief Executive had taken her decision weeks later, in April that year. The Claimant was not materially prejudiced.

88. Since the decision of the Chief Executive falls to be quashed in any event, I shall state my conclusions shortly. It is necessary, in order for any consultation to be fairly conducted, that those consulted know on what they are being consulted. In this case the Claimant and others did not know either about the amendment and the second revised layout plan during the period for making representations. Ms Olley failed to persuade me, however, that the substitution of the second for the first revised layout plan meant that the Claimant was prejudiced in the representations that he might have wished to make on the planning merits of the amended drawings. The position is less clear, however, about the deletion of “layout” from the application with the substitution of the second revised layout plan. The Claimant was not offered the opportunity to reformulate any objections that he may have had to the revised plan including the additional site area in the knowledge that the Interested Party was claiming that it did not require its layout to be approved. That might have caused him to consider whether to make, and to make, additional representations, on whether the “layout” on the second revised plan was in conflict with the “layout” on the Site Plan. He did not have that opportunity. In my judgment it is not satisfactory for the Council merely to say that in fact he had the opportunity after March 6<sup>th</sup> 2016 to make such representations when they had previously told him that the period for making them had ended. The question is, however, whether he has suffered any material prejudice. Ms Olley has not identified any such representations that he would or could have made had he been given that opportunity or any other practical detriment the Claimant suffered by being deprived of it.

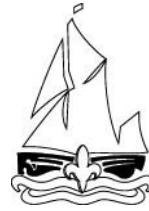
89. For these reasons in my judgment the application was one that could lawfully have been considered by the Chief Executive if it was substantively valid.

## **CONCLUSION**

90. For the reasons I have given,

**Judgment Approved by the court for handing down.**

- (1) the decision by the Council’s Chief Executive to approve the Interested Party’s application for approval of reserved matters as amended must be quashed in any event; and
- (2) the question whether there was a valid application for approval of reserved matters as amended that the Council may determine depends on whether the Council consider, not unreasonably, that the “layout” shown on the second revised plan is not in conflict with the “layout” shown on the Site Plan in accordance with which the development permitted must be carried out. That will require consideration of whether the increased footprint and different location for the house proposed resulted in an arrangement of buildings, routes and open spaces within the site and with buildings and spaces outside it that involved a material departure from the arrangement shown on the Site Plan.
- (3) The answer to that question involves a matter of planning judgment and is a matter that will require consideration when the application is reconsidered in the light of this judgment.



**REPORT of  
DIRECTOR OF PLANNING AND REGULATORY SERVICES**

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**to  
NORTH WESTERN AREA PLANNING COMMITTEE  
06 AUGUST 2018**

<b>Application Number</b>	<b>HOUSE /MAL/18/00758</b>
<b>Location</b>	Old Times Cottage, Mill Lane, Tolleshunt Major
<b>Proposal</b>	Proposed single storey extension to the rear with a raised outdoor platform, garage conversion and additional dormer to front elevation.
<b>Applicant</b>	S Norrington & H Tarling
<b>Agent</b>	W G Goodall
<b>Target Decision Date</b>	09/08/2018
<b>Case Officer</b>	Emma Worby
<b>Parish</b>	Tolleshunt Major
<b>Reason for Referral to the Committee / Council</b>	Member of Staff

**1. RECOMMENDATION**

APPROVE subject to the conditions (as detailed in Section 8 of this report).

**2. SITE MAP**

Please see overleaf.

# Old Times Cottage, Mill Lane, Tolleshunt Major

HOUSE/MAL/18/00758



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Maldon District Council 100018588 2014



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Scale: 1:2,500

Organisation: Maldon District Council

Department: Department

Comments: NW Committee 18/0758/HOUSE

Date: 26/07/2018

MSA Number: 100018588

Agenda Item no.6

### **3. SUMMARY**

#### **3.1 Proposal / brief overview, including any relevant background information**

3.1.1 The application site is located on the western side of Mill Lane, in a residential setting, within the settlement boundary of Tolleshunt Major. The application site is currently occupied by a semi-detached two storey dwelling with an attached single storey garage. The surrounding area is made up of an eclectic mix of dwellings with no prevailing pattern of development.

3.1.2 Planning permission is sought for the demolition of the existing conservatory and the construction of a single storey rear extension which would include the conversion of the garage to a bedroom and changes to the existing garage roof. The rear extension would have a depth of 3.65 metres, a width of 6.6 metres, an eaves height of 3.7 metres and a ridge height of 5.5 metres. It is proposed that this extension is finished with weatherboarding and slate roof tiles.

3.1.3 The garage door on the front elevation would be replaced with a single window, bi-fold doors would be located on the rear elevation and there would be two doors on the north elevation. The existing dormer window on the front elevation of the garage would be removed and replaced with three rooflights.

3.1.4 Proposals also include a raised platform and balustrade around the rear extension and the side of the existing garage with a maximum height of the balustrade at 2.3 metres and a maximum height of the platform at 1.2 metres. There is also an additional dormer window on the front elevation of the property which would match the style and size of the existing dormer window.

#### **3.2 Conclusion**

3.2.1 It is considered that the proposed development, by reason of its scale and design would not harm the appearance or character of the locality and, due to its relationship with the adjoining properties, the proposed development is not considered to result in any undue harm by way of overlooking or loss of amenity. In addition the proposed development does not detrimentally impact on the provision of amenity space and car parking provision. It is therefore considered that the proposed development is in accordance with policies D1, S1 and H4 of the approved Local Development Plan (LDP).

### **4. MAIN RELEVANT POLICIES**

Members' attention is drawn to the list of background papers attached to the agenda.

#### **4.1 National Planning Policy Framework 2018 including paragraphs:**

- 11 Presumption in favour of sustainable development
- 47-50 Determining applications
- 124-132 Achieving well-designed places

**4.2 Maldon District Local Development Plan approved by the Secretary of State:**

- D1 Design Quality and Built Environment
- H4 Effective Use of Land
- S1 Sustainable Development
- T2 Accessibility

**4.3 Relevant Planning Guidance / Documents:**

- National Planning Policy Framework (NPPF)
- Essex Design Guide
- Maldon District Design Guide (MDDG)
- Car Parking Standards

**5. MAIN CONSIDERATIONS**

**5.1 Principle of Development**

5.1.1 The principle of extending an existing dwellinghouse and of providing facilities in association with residential accommodation is considered acceptable in line with policies S1 and H4 of the approved LDP.

**5.2 Design and Impact on the Character of the Area**

5.2.1 The planning system promotes high quality development through good inclusive design and layout, and the creation of safe, sustainable, liveable and mixed communities. Good design should be indivisible from good planning. Recognised principles of good design seek to create a high quality built environment for all types of development.

5.2.2 It should be noted that good design is fundamental to high quality new development and its importance is reflected in the NPPF. The NPPF states that:

*“The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities”.*

5.2.3 The proposed single storey extension and raised platform would be located to the rear of the property and is unlikely to be visible from Mill Lane, with any views limited to the side of the development which may be visible from the north. Therefore the proposed extension would not have a substantial effect on the streetscene or have a significant impact on the character of the area.

5.2.4 Although the proposed single storey section of the property, including the proposed development and the existing garage, would be a large addition to the property, due to the presence of the existing garage, on balance, it is considered that the extension would be a subservient addition to the property and would not be considered excessive. It is also noted that the property has a large amenity space to the rear and therefore the extension would not result in a cramped form of development.

5.2.5 It is considered that the proposed materials for the extension with weatherboard finish and a slate roof would not match the existing property and would result in an

incongruous addition to the property. However, this has been covered in condition three, which details that the proposed materials are not approved and should match the existing property. This will ensure that the proposed materials are suitable for this type of development and would not be out of keeping with the existing dwelling or the surrounding area.

- 5.2.6 As the raised platform and balustrade surrounds the extension and has a maximum height of 2.3 metres for the balustrade and 1.2 metres for the platform, it is not considered to be an excessive addition to the property and is unlikely to be visible within the streetscene.
- 5.2.7 The proposed dormer on the front elevation would match the style and size of the existing dormer on this elevation and would be in alignment with the existing. Therefore it is considered that this would be a subservient addition to the front of the property would not cause harm to the streetscene or the existing dwelling.
- 5.2.8 Therefore, on balance, it is considered that the development, by reasons of its scale, design and appearance would not result in a demonstrable harm to the character and appearance of the existing dwelling and the locality in accordance with policies D1 and H4 of the LDP.

### **5.3 Impact on Residential Amenity**

- 5.3.1 The basis of policy D1 of the approved LDP seeks to ensure that development will protect the amenity of its surrounding areas taking into account privacy, overlooking, outlook, noise, smell, light, visual impact, pollution, daylight and sunlight. This is supported by section C07 of the MDDG (2017).
- 5.3.2 The application site is bordered by one adjoined neighbouring property to the south, Wassall House on Mill Lane. The proposed development would be 5 metres from the boundary of Wassall House. Due to this separation distance and the single storey nature of the proposed development it is not considered that it would form an overbearing development on the property at Wassall House. Furthermore there are no windows proposed which would face this neighbouring property and therefore it is not considered to give rise to any overlooking or loss of privacy.
- 5.3.3 A dormer window is proposed for the front elevation, however this is not considered to result in any further overlooking than is experienced by the existing dormer window on the front elevation and would not overlook any private amenity space due to its position on the front of the property. Therefore it is not considered to result in a loss of privacy.
- 5.3.4 Therefore, is not considered that the development would represent an unneighbourly form of development or give rise to overlooking or overshadowing, in accordance with the stipulations of D1 of the LDP.

### **5.4 Access, Parking and Highway Safety**

- 5.4.1 Policy T2 aims to create and maintain an accessible environment, requiring development proposal, inter alia, to sufficient parking facilities having regard to the Council's adopted parking standards. Similarly, policy D1 of the approved LDP

seeks to include safe and secure vehicle and cycle parking having regard to the Council's adopted parking standards and maximise connectivity within the development and to the surrounding areas including the provision of high quality and safe pedestrian, cycle and, where appropriate, horse riding routes.

5.4.2 The Council's adopted Vehicle Parking Standards SPD contains the parking standards which are expressed as maximum standards. This takes into account Government guidance which encourages the reduction in the reliance on the car and promotes methods of sustainable transport.

5.4.3 The proposed development would create an additional bedroom within the property resulting in a four bedroom dwelling. It would also result in the loss of one car parking space within the attached garage. The SPD states that a four bedroom dwelling should have a maximum of three car parking spaces, however the proposed development would only have two spaces. Although the concerns regarding the lack of car parking spaces from the Parish Council have been noted, as the provision within the SPD is a maximum and the property would still provide two spaces, it is therefore considered that the proposal would not conflict with the adopted parking standards. The applicant has stated that the driveway will be extended to accommodate three vehicles in response to the comments from the Parish Council, however this cannot be taken into consideration as it is not part of the planning application.

5.4.4 It is noted that Parish Council also have concerns regarding the amount of space for vehicles to turn on the property. However, the proposed development would not change the current parking situation on the site. Furthermore, it is not considered that Mill Lane is a busy road which would result in a highway safety concern if vehicles were to reverse onto it. Therefore, it is not considered that this would justify a reason for refusal.

## **5.5 Private Amenity Space and Landscaping**

5.5.1 Policy D1 of the approved LDP requires all development to provide sufficient and usable private and public amenity spaces, green infrastructure and public open spaces. In addition, the adopted Maldon Design Guide SPD advises a suitable garden size for each type of dwellinghouse, namely 100m<sup>2</sup> of private amenity space for dwellings with three or more bedrooms, 50m<sup>2</sup> for smaller dwellings and 25m<sup>2</sup> for flats.

5.5.2 The existing garden on the site is in excess of the standard contained within the Essex Design Guide of 100m<sup>2</sup>. The proposed development would result in the loss of approximately 10m<sup>2</sup> of amenity space, however the garden would still remain in excess of the standard. Therefore, the proposed development is in compliance with policy D1 of the LDP.

## **6. ANY RELEVANT SITE HISTORY**

- **HOUSE/MAL/17/00342** – Ground and first floor extension and garden store – Refused.
- **HOUSE/MAL/17/00922** – Ground and first floor extension, additional dormer window to front, Juliet balcony to the rear and garden store – Approved.

## 7. CONSULTATIONS AND REPRESENTATIONS RECEIVED

### 7.1 Representations received from Parish / Town Councils

Name of Parish / Town Council	Comment	Officer Response
Tolleshunt Major Parish Council	The Parish Council objects to this application due to the following concerns: The lack of sufficient parking spaces for an increasingly large house. The lack of space for allowing vehicles to turn on the property in order to access the highway.	Comments noted and discussed in section 5.4 above.

The applicant has responded to these comments stating the following:

- The garage is unable to house a vehicle at present
- There are plans to extend the driveway to accommodate three vehicles
- The previously approved scheme included a fourth bedroom which was supported by the Parish Council.
- The access is no difference to that which has always been in existence.

### 7.2 Representations received from Interested Parties

No letters of representation have been received from interested parties at the time of writing this report. However, due to a change in the proposal to include a dormer on the front elevation and a raised platform, the consultation period expires on 03/08/2018 and therefore any further comments will be given as a verbal update to members during the committee meeting.

## 8. PROPOSED CONDITIONS

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.  
REASON: To comply with Section 91(1) The Town & Country Planning Act 1990 (as amended).
- 2 The development hereby permitted shall be carried out in accordance with the following approved plans and documents: Location Plan, 18-2331-1E, 18-2331-1B.  
REASON: To ensure that the development is carried out in accordance with the details as approved.
- 3 Notwithstanding the details shown within the plans hereby approved, the use of the weatherboarding and slate roof tiles are not approved and the materials used in the construction of the development shall match those used in the existing building unless otherwise approved in writing by the local planning authority.

REASON: In the interest of the character and appearance of the area in accordance with policy D1 of the approved LDP and guidance contained within the NPPF.

**POSITIVE AND PROACTIVE STATEMENT**

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



**REPORT of  
DIRECTOR OF PLANNING AND REGULATORY SERVICES**

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**to  
NORTH WESTERN AREA PLANNING COMMITTEE  
06 AUGUST 2018**

<b>Application Number</b>	<b>FUL/MAL/18/00674</b>
<b>Location</b>	Observation Tower Mell Road Tollesbury Essex
<b>Proposal</b>	Single storey extension to the Observation Tower at Mell Farm for holiday accommodation, and the retention of existing small scale school visit use of the original tower
<b>Applicant</b>	Mr & Mrs Andrew St Joseph
<b>Agent</b>	Miss Elizabeth Thorogood - Whirledge And Nott
<b>Target Decision Date</b>	31 July 2018 - EOT: 7 August 2018
<b>Case Officer</b>	Yee Cheung
<b>Parish</b>	Tollesbury
<b>Reason for Referral to the Committee / Council</b>	Councillor / Member of Staff

**1. RECOMMENDATION**

**APPROVE** subject to the conditions (as detailed in Section 8 of this report).

**2. SITE MAP**

Please see overleaf.

## Observation Tower, Mell Road, Tollesbury

FUL/MAL/18/00674



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Maldon District Council 100018588 2014

Scale: 1:4,000

Organisation: Maldon District Council

Department: Department

Comments: NW Committee 18/00674/FUL

Date: 24/07/2018

[www.maldon.gov.uk](http://www.maldon.gov.uk)

MSA Number: 100018588

Agenda Item no. 7

### **3. SUMMARY**

#### **3.1 Proposal / brief overview, including any relevant background information**

- 3.1.1 The application site is located outside the settlement of Tollesbury and is occupied by a six-sided WWII observation tower within the Mell Farm complex. The tower is sited on agricultural land to the east of an old railway track and overlooks the Tollesbury Marshes.
- 3.1.2 The building is constructed using facing brick and has a flat roof. It comprises of three floors and is structurally sound. Based on the Planning Statement submitted, it is understood that the tower was used for minor agricultural storage but is now used for school visits on an ad hoc basis by the children at the local Tollesbury Primary School no more than 10 times per year. Planning permission is sought to use the observation tower, primarily the second floor, for educational use / outdoor learning only.
- 3.1.3 The proposal also includes a single-storey extension to the east side of the tower to be used as holiday accommodation. The six-sided single storey extension to the tower would replicate the shape of the existing WWII observation tower. It would be approximately 2.9 metres in height with a flat (roof excluding the height of the glazed lantern). Each of the six sides would be approximately 4.8 metres in length. The span of the building would be approximately 8.3 metres. It will comprise of a bedroom with en-suite, a sitting out / dining area, small kitchen. A door opening will be created between the extension and the secondary lobby area where it accesses an existing W.C (wheelchair accessible). An existing window at ground floor currently serving the W.C (wheelchair accessible) will be repositioned from the north east elevation to the east elevation.
- 3.1.4 It is proposed that the single-storey extension would be constructed using external materials such as facing brickwork for the plinth and vertical timber cladding for the walls. The doors and window frames would be powder metal coated in grey colour.
- 3.1.5 There will be a patio area of approximately 2 metre in depth located south east of the single-storey extension.
- 3.1.6 Access to the site is via Mell Farm and along an existing agricultural farm track and then onto a disused railway track which is grassed over. A parking area for two vehicles is proposed next to the entrance to the tower.

#### **3.2 Conclusion**

- 3.2.1 It is concluded that on planning balance, the proposal to use the existing WWII observation tower for educational purposes and to construct a single-storey accommodation to the side of the tower for a holiday let would support the rural economy in terms of rural tourism and leisure development that benefit businesses in rural areas, local communities and visitors. The proposal would meet the requirement as set out at paragraph 83 of the NPPF where it supports the provision and expansion of tourist and visitor facilities in appropriate locations where identified needs are not met by existing facilities in rural areas. The proposal would accord with policies S1,

S8, D1, E5 of the Maldon District Local Development Plan (LDP) and Government advice contained within the 2018 National Planning Policy Framework (NPPF).

#### **4. MAIN RELEVANT POLICIES**

Members' attention is drawn to the list of background papers attached to the agenda.

##### **4.1 National Planning Policy Framework July 2018 including paragraphs:**

- 11 Presumption in favour of sustainable development
- 38 Decision-making
- 47-50 Determining applications
- 83-84 Supporting a prosperous rural economy
- 124-132 Achieving well-designed places
- 197 Non-designated heritage assets.

##### **4.2 Maldon District Local Development Plan 2014 – 2029 approved by the Secretary of State:**

- S1 Sustainable Development
- S7 Prosperous Rural Communities
- S8 Settlement Boundaries and the Countryside
- D1 Design Quality and Built Environment
- D2 Climate Change & Environmental Impact of New Development
- D3 Conservation and Heritage Asset
- E5 Tourism
- T1 Sustainable Transport
- T2 Accessibility
- N2 Natural Environment and Biodiversity

##### **4.3 Relevant Planning Guidance / Documents:**

- National Planning Policy Guidance (NPPG)
- National Planning Policy Framework (NPPF)
- Car Parking Standards
- Maldon District Design Guide (MDDG)

#### **5. MAIN CONSIDERATIONS**

##### **5.1 Principle of Development**

- 5.1.1 The Council is required to determine planning applications in accordance with its adopted Development Plan unless material considerations indicate otherwise (Section 38(6) of the Planning and Compulsory Purchase Act 2004 (PCPA 2004) and Section 70(2) of the Town and Country Planning Act 1990 (TCPA1990)).
- 5.1.2 The LDP, as approved, has been produced in light of the former NPPF's emphasis on sustainable development and Policy S1 promotes the principles of sustainable

development encompassing the three dimensions identified in both the former and new version of the NPPF. Within the NPPF there is a presumption in favour of sustainable development (the ‘presumption’) which is central to the policy approach in the Framework, as it sets out the Government’s changes to the planning system and emphasizes the need to plan positively for appropriate new development.

- 5.1.3 It is necessary to assess whether the proposed development is ‘sustainable development’ with regard to three dimensions defined in the NPPF, which are an economic, social and environmental role. If the site is considered sustainable then the NPPF’s ‘presumption in favour of sustainable development’ applies.
- 5.1.4 Paragraphs 83 and 84 of the 2018 NPPF seeks to support a prosperous rural economy. This includes enabling *‘sustainable rural tourism and leisure developments which respect the character of the countryside’*. There is limited guidance contained in the NPPF on tourism, and the Good Practice Guide on Tourism, withdrawn on 7 March 2014, has now been replaced by the national guidance in the National Planning Practice Guidance where information is also limited but makes reference to the Visit England website for further guidance on tourism (Paragraph: 007 Reference ID: 2b-007-20140306 dated 06 03 2014).
- 5.1.5 Policy E5 of the LDP seeks to support tourism across the District providing there is a need, there are good connections to other tourist destinations, and there would be no significant impact upon amenity or the natural and historic environment. As part of the application submission, the Applicant has provided details in support of the proposal and has identified that there is a need for the provision proposed (Policy E5(1)). In the Planning Statement (Section 6.17) it states the East of England Tourism: Maldon District Tourism Strategy Research 2009 (which forms part of the evidence base for the new Local Plan) identifies the coast and marshes as one of the product strengths of the District, and goes on to identify the provision and quality of attractions / accommodation as a product weakness, stating that these areas are in need of improvement. This confirms that there is a need for good quality accommodation within the District and that the coast and marshes are popular destinations for visitors, making the Observation Tower at Mell Farm an ideal location for providing a high quality accommodation offer.
- 5.1.6 A Visit England research document: Self Catering accommodation (2014) sets out the market trends for self-catered accommodation and shows that the East of England is the second most popular region for these types of trips (Extract 1 below). Average annual growth in the self-catering sector is stronger than for England holidays as a whole (Extract 2 below), and outdoor activities account for the largest percentage of these types of trips. It is therefore considered that the holiday accommodation proposed at the tower would appeal to visitors to the area.

5.1.7 Extract 1 from Visit England: Self Catering Accommodation 2014

Region visited	% of trips taken by all trip takers	% of trips involving self-catering
West Midlands	7%	3%
East of England	9%	14%
East Midlands	7%	9%
London	8%	1%
North West	17%	13%
North East	4%	3%
South East	15%	8%
South West	23%	38%

5.1.8 Extract 2 from Visit England: Self Catering Accommodation 2014

<b>The number of self-catered trips increased strongly in 2009, with 30% growth compared to 2008. Although the levels of yearly growth have varied since then, the average annual growth in the sector is stronger than for England holidays as a whole.</b>																											
<table border="1"> <thead> <tr> <th>Number of domestic holidays Millions</th><th>Total England</th><th>Self-catering</th></tr> </thead> <tbody> <tr> <td>2008</td><td>39.75</td><td>4.69</td></tr> <tr> <td>2009</td><td>47.01</td><td>6.09</td></tr> <tr> <td>2010</td><td>43.54</td><td>5.90</td></tr> <tr> <td>2011</td><td>46.16</td><td>5.95</td></tr> <tr> <td>2012</td><td>45.99</td><td>6.11</td></tr> <tr> <td>2013</td><td>44.93</td><td>5.77</td></tr> <tr> <td>2014</td><td>40.74</td><td>5.79</td></tr> <tr> <td>Annual average growth 2008-2014</td><td>1%</td><td>4%</td></tr> </tbody> </table>	Number of domestic holidays Millions	Total England	Self-catering	2008	39.75	4.69	2009	47.01	6.09	2010	43.54	5.90	2011	46.16	5.95	2012	45.99	6.11	2013	44.93	5.77	2014	40.74	5.79	Annual average growth 2008-2014	1%	4%
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5.1.9 In addition to the above, the Applicant has been working closely with ‘Grove Cottages’, a Holiday Cottage Agency specialising in character / self-catering cottages in North Essex and South Suffolk. A letter dated June 2018 was submitted as part of the application from ‘Grove Cottages’ who supports of this project.

5.1.10 The application site is in close proximity of public footpaths. The network of footpaths allows visitors to have direct access to areas of environmental interests such as Tollesbury Wick marshes, Mill Farm marshes, Tollesbury Marina, and beyond. The observation tower, while not a listed building, is of considerable local historical interest. It is considered that by using the tower for educational purposes and tourism would attract visitors to the area and to help to secure the continued survival of the building. Further, the proposal would also ‘offer increased employment to a number of small local businesses both directly and indirectly, bringing additional revenue to small businesses in the District’.

5.1.11 The Economic Development has assessed the proposal and raises no objection as the development proposal would create an opportunity for additional income for both the farm business and neighbouring businesses by creating additional accommodation for visitors to the Maldon District in accordance with policy E5 of the LDP.

5.1.12 It is considered the above development proposal would support the rural economy in terms of rural tourism and leisure development that benefit businesses in rural areas,

local communities and visitors. Further, the proposal would meet the requirement as set out in the NPPF where it supports the provision and expansion of tourist and visitor facilities. The proposal would therefore accord with policy E5(1) of the LDP and Government guidance contained within the 2018 NPPF.

## **5.2 Design and Impact on the Character of the Area**

5.2.1 The planning system promotes high quality development through good inclusive design and layout, and the creation of safe, sustainable, liveable and mixed communities. Good design should be indivisible from good planning. Recognised principles of good design seek to create a high quality built environment for all types of development.

5.2.2 It should be noted that good design is fundamental to high quality new development and its importance is reflected in the NPPF. The 2018 NPPF states that:

*“The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities”.*

*“Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account local design standards, style guides in plans or supplementary planning documents”.*

5.2.3 This principle is also set out in the approved LDP. The basis of policy D1 of the approved LDP seeks to ensure that all development will respect and enhance the character and local context and make a positive contribution in terms of:-

- a) Architectural style, use of materials, detailed design features and construction methods. Innovative design and construction solutions will be considered where appropriate;
- b) Height, size, scale, form, massing and proportion;
- c) Landscape setting, townscape setting and skylines;
- d) Layout, orientation, and density;
- e) Historic environment particularly in relation to designated and non-designated heritage assets;
- f) Natural environment particularly in relation to designated and non-designated sites of biodiversity / geodiversity value; and
- g) Energy and resource efficiency

5.2.4 The application site lies outside of any defined development boundary. According to policies S1 and S8 of the LDP, the countryside will be protected for its landscape, natural resources and ecological value as well as its intrinsic character and beauty. The policies stipulate that outside of the defined settlement boundaries, the Garden Suburbs and the Strategic Allocations, planning permission for development will only be granted where the intrinsic character and beauty of the countryside is not adversely

impacted upon and provided the development is for proposals that are in compliance with policies within the LDP, neighbourhood plans and other local planning guidance.

5.2.5 The proposal is to construct a six-sided single-storey extension to the north east elevation of the observation tower to be used as a holiday let. It is proposed that the extension would be constructed using modern materials such as vertical timber cladding and grey metal windows and doors. The juxtaposition between the old tower and the new build would allow the contemporary extension to be ‘read’ as a later addition, without detracting from or competing with the host structure. The footprint and the shape of the development references that of the tower and is considered proportionate without harming its integrity. It is considered that on balance, the proposal would cause negligible harm to the building and if approved would help secure the continued survival of the building. The Conservation Officer has assessed the application due to its local historic interest and has raised no objection to the proposal. It is therefore considered that the development would not conflict with paragraph 197 of the NPPF or policy D3 of the LDP.

5.2.6 With regard to the development and its impact on the character and appearance of the area, the proposal is single-storey extension with a flat roof and is approximately 2.9 metres in height excluding the height of the glazed lantern which will add approximately 0.2 metre to the total height of the development to 3.1 metres, it is not considered that the development would appear visually intrusive, prominent or unduly dominant when viewed against the backdrop of the rural landscape. Existing mature hedgerows and field trees also provides effective screening to the new development where only glimpse of it and the tower can be seen from afar. In this respect, it is not considered that the development proposal would result in significant harm to the character and appearance of the rural area to such a degree to warrant refusal of this application. Therefore the proposal would accord with policies S1 and D1 of the LDP where the policies seek to conserve and enhance the natural and built environment.

### **5.3 Impact on Residential Amenity**

5.3.1 The basis of policy D1 of the LDP seeks to ensure that development will protect the amenity of its surrounding areas taking into account privacy, overlooking, outlook, noise, smell, light, visual impact, pollution, daylight and sunlight.

5.3.2 Besides the existing occupiers at Mell Farm, who are also the Applicant for this planning application, there are no immediate adjacent neighbours to be affected by the development by way of overbearing, overshadowing or overlooking. The nearest dwelling houses to this application site are Marsh Farm House and No. 63 Wycke Lane which are located approximately 250 and 260 metres away to the north east and north west of the tower. In this respect, the development would accord with policy D1 of the LDP.

### **5.4 Access, Parking and Highway Safety**

5.4.1 Policy T2 of the LDP aims to create and maintain an accessible environment, requiring development proposal, inter alia, to sufficient parking facilities having regard to the Council’s adopted parking standards. Similarly, policy D1 of the approved LDP seeks to include safe and secure vehicle and cycle parking having regard to the Council’s adopted parking standards and maximise connectivity within

the development and to surrounding areas including the provision of high quality and safe pedestrian, cycle and, where appropriate, horse riding routes.

- 5.4.2 The Council's adopted Vehicle Parking Standards SPD contains the parking standards which are expressed as maximum standards. This takes into account Government guidance which encourages the reduction in the reliance on the car and promotes methods of sustainable transport.
- 5.4.3 The single-storey extension to form the holiday accommodation would have one bedroom only. Based on the Block Plan submitted it shows two parking spaces are being provided at the entrance to the tower. This provision exceeds the Vehicle Parking Standards by one space.
- 5.4.4 Access to the site would be via an entrance farm gate along Mell Road. This existing access is used for the transport of livestock. Vehicles would need permission from the Applicant to enter the agricultural track. Approximately 500 metres into the track, visitors would need to turn into another track (a disused railway line) for another 200 metres before reaching the observation tower. While the access track appears narrow on plan, there is sufficient space for vehicles to turn outside the designated access track without impacting on highway safety as the track does not allow any free flow traffic through the site.
- 5.4.5 Having considered the modest size of the development, its location, and how it would be managed by the Applicant i.e. booking the holiday accommodation in advance, it is not considered that the proposal would generate significant pedestrian or vehicular movement to and from the application site to justify refusal.
- 5.4.6 With regard to the educational use of the observation tower, it has been confirmed in an email correspondence dated 19 July 2018 that the school children (approximately 20-30 pupils at a time) from the local primary school will travel to the tower on foot. As such, there will be no vehicular movements (i.e. mini buses) or additional parking spaces required for the development proposal.
- 5.4.7 The Highway Authority has been consulted and raises no objection to the proposal.

## **5.5 Private Amenity Space and Landscaping**

- 5.5.1 Policy D1 of the LDP requires all development to provide sufficient and usable private and public amenity spaces, green infrastructure and public open spaces.
- 5.5.2 The single-storey extension to the observation tower would not affect any private amenity space as the proposed use is a holiday let and not for permanent occupation. As such, the provision of a private amenity space would not be necessary for this type of development. In terms of landscaping, it is noted on site that soft landscaping / young planting has been introduced around the perimeter of the application site. The submitted plans show the area of hard landscaping such as the patio area and car parking area but do not show any soft landscaping within or around the site. Therefore is not considered unreasonable to impose a condition for a scheme of soft landscaping to be submitted to and approved by the Council should the application be approved.

## 5.6 Other Material Considerations

5.6.1 While the observation tower is not a listed building, the Conservation Officer was consulted due to its local historic interest as it is an important survival of the network of WWII coastal defences. It was advised that the observation tower should be regarded as a non-designated heritage asset for the purposes of Paragraph 197 of the NPPF.

5.6.2 The Essex Historic Environment Record (EHER) has assessed the application and advised that the proposed extension will impact on the World War II Naval Watchtower. The six-sided, brick-built tower stands by the former route of the railway line to Tollesbury Pier (EHER: 45184) and the River Blackwater approximately half a mile to the S.E. The tower was built in the 1940s and was a Naval Watchtower used as a control centre for mines in the River Blackwater and its environs (EHER 10726). The tower also contained maritime Radio Direction Finding equipment, later called radar. This would monitor the approaches to the estuary for enemy shipping. An aerial on the third storey would have turned originally by hand. Around the tower there are a number of head-high brick walls, abutting the tower, giving open enclosures. These may have been for housing fuel or stores. It is clear that the tower has been altered in a number of ways, either during or after World War II. It is not known whether there were further structures associated with either the watchtower or the railway. It is possible therefore that the proposed development will impact on archaeological deposits and finds, these are both fragile and finite in nature. EHER has recommended that if this proposal is approved that a full archaeological condition is attached to the planning consent. This would accord with policy D3 of the LDP and in line with advice contained at paragraph 197 of the NPPF.

5.6.3 With regard to surface water and foul drainage, the Environmental Health Services has raised no objection subject to conditions to be imposed should the application be approved. A surface water drainage condition would be reasonable as the site is in close proximity to important marshes. The case officer does not consider that a foul drainage scheme would be necessary for this site as the principle tower already has two W.C. at ground floor and it is likely that the drainage from the en-suite would be connected to the same system.

## 6. ANY RELEVANT SITE HISTORY

6.1 No relevant planning history for this site.

## 7. CONSULTATIONS AND REPRESENTATIONS RECEIVED

### 7.1 Representations received from Parish / Town Councils

Name of Parish / Town Council	Comment	Officer Response
Tollesbury Parish Council	Recommend Approval of this application	Noted

## 7.2 Statutory Consultees and Other Organisations (*summarised*)

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
Emergency Planner	Not in a Flood Zone. No comment to make on this application	Noted
Environment Agency	No reply at the time of writing this report	Any comments received will be reported on the Members Update
Highway Authority	No objection	Noted in the officer report
Natural England (NE)	NE has no comments to make on this application.	Noted

## 7.3 Internal Consultees (*summarised*)

Name of Internal Consultee	Comment	Officer Response
Economic Development	No objection to this proposal as it will create an opportunity for additional income for both the farm business and neighbouring businesses by creating additional accommodation for visitors to the District.	Noted in the officer report
Conservation Officer	The proposal does not conflict with policy D3 of the LDP. No objection subject to conditions requiring archaeological building recording and agreement of materials prior to commencement.	Noted in the officer report
Environmental Health Services	<p>In the Flood Zone. Environment Agency (EA) should be consulted.</p> <p>No objection subject to conditions regarding to surface water and foul drainage to be imposed should the application be approved</p>	<p>EA has been consulted but no reply has been received at the time of writing this report. Any comments received will be reported on the Members Update. Irrespective of this, the Emergency Planner has confirmed that the site is not in the Flood Zone.</p> <p>Surface water and foul drainage has been noted in the officer report</p>

## 7.4 Representations received from Interested Parties (*summarised*)

7.4.1 Two letter of representation were received **in support** of the application and the reasons for support are summarised as set out in the table below:

Supporting Comment	Officer Response
The proposed development is in keeping with the locality; would make a contribution to and enhance the leisure economy; and that environmental and other risks are low	Noted in the officer report
The tower is a valuable asset as it supports outdoor learning an inside space for teaching and shelter as well as toilet/washing facilities.	

## 8. PROPOSED CONDITIONS

- 1 The development hereby permitted shall begin no later than three years from the date of this decision.  
REASON: To comply with Section 91(1) of The Town & Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2 The development shall be carried out in accordance with the following approved plans and documents: Location Plan; Site Plan; ST.JOSEPH/04/01; ST.JOSEPH/04/02; ST.JOSEPH/04/03; and ST.JOSEPH/04/04.  
REASON: For the avoidance of doubt as to the extent of this permission.
- 3 No development shall take place until samples of the facing material to be used have been submitted to and approved in writing by the local planning authority. The works must then be carried out in accordance with the approved details.  
REASON: To ensure that the external materials to be used in the development are acceptable in accordance with Policy D1 of the Maldon District LDP and Government advice contained in the NPPF.
- 4 No development shall take place until full details of both hard and soft landscape works to be carried out have been submitted to and approved in writing by the local planning authority. These details shall include the layout of the hard landscaped areas with the materials and finishes to be used and details of the soft landscape works including schedules of shrubs and trees to be planted, noting the species, stock size, proposed numbers/densities and details of the planting scheme's implementation, aftercare and maintenance programme. The hard landscape works shall be carried out as approved prior to the beneficial occupation of the development hereby approved unless otherwise first agreed in writing by the local planning authority. The soft landscape works shall be carried out as approved within the first available planting season (October to March inclusive) following the commencement of the development, unless otherwise first agreed in writing by the local planning authority. If within a period of five years from the date of the planting of any tree or plant, or any tree or plant planted in its replacement, is removed, uprooted, destroyed, dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted in the same place, unless the local planning authority gives its written

consent to any variation.

**REASON:** To ensure the soft and hard landscaping are appropriate and to protect the visual amenity of the area in accordance with Policies S1 and D1 of the Maldon District LDP and Government advice as contained in the NPPF.

5 Details of the siting, height, design and materials of the treatment of all boundaries including gates, fences, walls, railings and piers shall be submitted to and approved in writing by the local planning authority. The boundary treatment as approved shall be constructed prior to the first use/occupation of the development to which it relates and be retained as such thereafter.

**REASON:** To ensure the details of the boundary treatment are appropriate and to protect the visual amenity of the area in accordance with Policies S1 and D1 of the Maldon District LDP and Government advice as contained in the NPPF.

6 Prior to the commencement of the development details of the surface water drainage scheme to serve the development shall be submitted to and agreed in writing by the local planning authority. The agreed scheme shall be implemented prior to the first occupation of the development.

**REASON:** To prevent the undue contamination of the site in accordance with Policy D2 of the Maldon District LDP.

7 No development including any site clearance or groundworks of any kind shall take place within the site until the applicant or their agents; the owner of the site or successors in title has submitted an archaeological assessment by an accredited archaeological consultant to establish the archaeological significance of the site. Such archaeological assessment shall be approved by the local planning authority and will inform the implementation of a programme of archaeological work. The development shall be carried out in a manner that accommodates such approved programme of archaeological work.

**REASON:** To protect the site which is of archaeological interest in accordance with Policy D3 of the Maldon District LDP and Government advice contained in the NPPF

8 No development including any site clearance or groundworks of any kind shall take place within the site until the applicant or their agents; the owner of the site or successors in title has secured the implementation of a programme of archaeological work from an accredited archaeological contractor in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. The development shall be carried out in a manner that accommodates the approved programme of archaeological work.

**REASON:** To protect the site which is of archaeological interest in accordance with Policy D3 of the Maldon District LDP and Government advice contained in the NPPF

9 The accommodation within the extension of the building hereby approved shall be occupied solely as holiday accommodation and shall not be occupied as a person's sole or main place of residence and shall not be occupied by the same person or persons for more than 28 days at a time within any six week period.

**REASON:** To ensure the use of the site is appropriate to the locality in this rural area and to prevent permanent residential occupation of the holiday let having regard to the guidance and provisions of the NPPF, and policies S1, S7, S8, D1 and E5 of the Maldon District LDP.

10 The owners/operators shall maintain an up to date register of the names of all persons who stay within the approved holiday accommodation on the site, the duration of their stay, and an indication of their main home addresses by way of road name and town, and shall make this information available at all reasonable times to the local planning authority.

**REASON:** To ensure the use of the site is appropriate to the locality in this rural area

and to prevent permanent residential occupation of the holiday let having regard to the guidance and provisions of the NPPF, and policies S1, S7, S8, D1 and E5 of the Maldon District LDP.

11 The observation tower shall only be used for ten functions per year for educational purposes in accordance with the submitted supporting Planning Statement prepared by Whirledge And Nott.

REASON To limit the number and noise of vehicle and pedestrian movements and in the interests of protecting the rural area in accordance with policies D1, T2 and N2 of the Maldon District LDP and Government advice contained within the NPPF.

## **INFORMATIVES**

### Health and Safety

The Applicant is advised to consult Environment Services on any requirements we may have regarding Health & Safety matters at the premises.

### Waste Management

The Applicant should consult the Waste and Street Scene Team at Maldon District Council to ensure that adequate and suitable facilities for the storage and collection of domestic waste and recyclables are agreed, and that the site road is constructed to accommodate the size and weight of the Council's collection vehicles.

### Construction

The applicant should ensure the control of nuisances during construction works to preserve the amenity of the area and avoid nuisances to neighbours:

- a) No waste materials should be burnt on the site, instead being removed by licensed waste contractors;
- b) No dust emissions should leave the boundary of the site;
- c) Consideration should be taken to restricting the duration of noisy activities and in locating them away from the periphery of the site;
- d) Hours of works: works should only be undertaken between 0730 hours and 1800 hours on weekdays; between 0800 hours and 1300 hours on Saturdays and not at any time on Sundays and Public Holidays.



**REPORT of  
DIRECTOR OF PLANNING AND REGULATORY SERVICES**

**to  
NORTH WESTERN AREA PLANNING COMMITTEE  
6 AUGUST 2018**

<b>Application Number</b>	<b>DET/MAL/18/05091</b>
<b>Location</b>	Land West Of Fambridge Road North Fambridge Essex
<b>Proposal</b>	Compliance with conditions notification of approved application <b>OUT/MAL/14/01016</b> (Outline planning application for up to 75 market and affordable dwellings, a village centre of up to 1,000sqm of flexible commercial and community floor space, a 1.8ha village green and public open space). <b>Condition 12</b> - Surface water drainage system maintenance. <b>Condition 13</b> - Foul and surface water drainage scheme. <b>Condition 17</b> - Discharge of surface water onto highway. <b>Condition 31</b> - Wastewater strategy. <b>Condition 33</b> - Foul water strategy.
<b>Applicant</b>	David Wilson Homes
<b>Agent</b>	N/A
<b>Target Decision Date</b>	18 September 2018
<b>Case Officer</b>	Yee Cheung
<b>Parish</b>	<b>NORTH FAMBRIDGE</b>
<b>Reason for Referral to the Committee / Council</b>	At the Director of Planning & Regulatory Services' discretion for consistency reasons

**1. RECOMMENDATION**

The recommendation is to discharge the following conditions as set out in Section 8 of the report.

**2. SITE MAP**

Please see overleaf.

**Land West of Fambridge Road, North Fambridge**  
DET/MAL/18/05091



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Scale: 1:4,000

Organisation: Maldon District Council

Department: Department

Comments: NW Committee 18/05091/DET

Date: 24/07/2018

MSA Number: 100018588

Agenda Item no. 8

### 3. SUMMARY

#### 3.1 **Proposal / brief overview, including any relevant background information**

3.1.1 The application site measuring approximately 6.19 hectares in size lies within the development boundary for North Fambridge. Before the Maldon District Local Development Plan was approved by the Secretary of State, the application site was located outside the development boundary for North Fambridge in the Maldon District Replacement Local Plan (2005). In the Local Development Plan Proposals Map, the site is within the settlement boundary of North Fambridge.

3.1.2 The site is predominantly rectangular in shape and has an existing access off Fambridge Road, opposite the access to Fleet Farm. The topography of the site is gentle, with levels rising consistently and evenly from Fambridge Road towards the west.

3.1.3 The site forms part of a larger agricultural field and contains limited hedgerow and tree planting along its boundaries. Rear gardens of existing residential dwellings along The Avenue abuts the southern boundary of the application site.

3.1.4 Outline planning application for up to 75 market and affordable dwellings, a village centre of up to 1,000sqm of flexible commercial and community floor space, a 1.8ha village green and public open space (**OUT/MAL/14/01016** dated 18 March 2016). As part of the outline approval **OUT/MAL/14/01016**, the Applicant had entered a signed Section 106 legal agreement for the following contributions:-

- 30% Affordable housing
- Education contribution
- NHS contribution
- Residential Travel Plan
- Open Space and Amenity Land
- Off-site ecological contribution

3.1.5 The Reserved Matters application (reference: **RES/MAL/17/00776**) for the approval of access, appearance, landscaping, layout and scale on approved planning application **OUT/MAL/14/01016** was approved by the Council at the North Western Area Planning Committee on 5 February 2018. In the officer report, it was confirmed that the Reserved Matters application **RES/MAL/17/00776** did not include a detailed proposal for the commercial elements listed in the outline planning application **OUT/MAL/14/01016** (*A village centre of up to 1000sqm of flexible commercial and community floor space*) as this element of the proposal would lead the delivery of the commercial space independently from that of the 75 dwellings.

3.1.6 At the North Western Area Planning Committee on 14 May 2018, the Discharge of Conditions application **DET/MAL/17/05154** was presented to Members at the discretion of Director of Planning & Regulatory Services and Conditions 12, 13, 17, 31 and 33 were included amongst the conditions to be discharged. Conditions 12, 13, 17, 31 and 33 imposed on **OUT/MAL/14/01016** were considered by Members. Members were not satisfied that the addition of a storage tank for foul waste at the existing pumping station would resolve the current issue, and that it would not address

the potential increase in waste disposal. It was considered that tankerage was not an acceptable solution, and that an adequate capacity to handle and dispose of the foul/surface water was available to serve the development had not been demonstrated. As such, the Council was unable to discharge Conditions 12, 13, 17, 31 and 33 imposed on outline planning application **OUT/MAL/14/01016** under the **DET/MAL/17/05154** application.

3.1.7 Having considered the scale, nature and sensitivity of the site and more importantly for the reason of consistency following the previous Discharge of Conditions application **DET/MAL/17/05154**, consultation with the Director of Planning & Regulatory Services was held and it was agreed that the Discharge of Condition application **DET/MAL/18/05091** for Conditions 12, 13, 17, 31 and 33 at land to the west of Farnbridge Road to be presented to Members at the North Western Area Planning Committee.

3.1.8 Additional clarification has been provided by Anglian Water in respect of this matter (included at **APPENDICES 2 and 3**) and it is therefore considered appropriate to fully re-assess the impact of the proposed development in terms of drainage.

### **3.2 Conclusion**

3.2.1 Based on the details submitted for the Discharge of Conditions application, the Council has considered that the following conditions can be discharged:-

<b>Conditions</b>	<b>Discharged</b>
12	Yes
13	Yes
17	Yes
31	Yes
33	Yes

## **4. MAIN RELEVANT POLICIES**

Members' attention is drawn to the list of background papers attached to the agenda.

### **4.1 National Planning Policy Framework 2018 including paragraphs:**

- 7-8, 14, 17, 127, 170 and 187

### **4.2 Maldon District Local Development Plan approved by the Secretary of State on 21 July 2017**

- Policy S1 Sustainable Development
- Policy D1 Design Quality and Built Environment
- Policy D2 Climate Change & Environmental Impact of New Development

### **4.3 Relevant Planning Guidance / Documents:**

- National Planning Policy Guidance (NPPG)
- National Planning Policy Framework (NPPF)

## 5. **MAIN CONSIDERATIONS**

### 5.1 Principle of Development

5.1.1 The Reserved Matters application (RM) was approved at the North Western Area Committee on 5 February 2018. Prior to this RM application, outline planning permission **OUT/MAL/14/01016** with all matters reserved for up to 75 dwellings. Accompanied with the outline planning permission was a signed and dated S106 legal agreement to provide contributions as listed above.

5.1.2 As part of the outline planning application approval **OUT/MAL/14/01016**, 34 planning conditions were imposed. Out of the 34 conditions, 21 conditions imposed on **OUT/MAL/14/01016** were pre-commencement planning conditions (Conditions: 5, 6, 8, 9, 12, 13, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31 and 33), however the Applicant is seeking to discharge 5 of the planning conditions imposed under this current DET/MAL/18/05091 only (Conditions: 12, 13, 17, 31 and 33). These planning conditions are listed below and summarised in Section 3.2.1 of this report. It is important to note that Conditions: 5, 6, 8, 9, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, and 30 of **OUT/MAL/14/01016** were approved under **DET/MAL/17/05154**. The outstanding conditions in relation to surface water drainage system maintenance (C.12); foul and surface water drainage scheme (C.13); discharge of surface water onto highway C.17); wastewater strategy (C.31); and foul water strategy (C.33) are being considered under the terms of this application (**DET/MAL/18/05091**).

### 5.2 Condition 12 of OUT/MAL/14/01016

5.2.1 Condition 12 states:-

*'No development shall commence until details of who shall be responsible for the maintenance of the surface water drainage system in perpetuity have been submitted to and approved in writing by the Local Planning Authority. The management of the surface water drainage system shall accord with the approved details thereafter'*

5.2.2 As part of the maintenance of the surface water drainage system, the Applicant has submitted the following information to the Council for consideration:-

- Surface Water Drainage Maintenance Overview
- 132915-R3 (0) – Drainage Statement Site A
- 132915-R5 (00) – SuDS Calculations Site A

5.2.3 The Surface Water Drainage Maintenance Overview includes the following extracts:

#### Surface Water Strategy:

*'As part of the planning permission for the development at Land West of Fambridge Road, North Fambridge a surface water drainage strategy is to be progressed based on sustainable drainage principles.'*

*'The surface water drainage strategy is to be produced to cater for surface water run off generated up to and including the one in 100 year storm event.'*

*The surface water strategy consists of permeable paving to areas of hard standing which includes private drives, parking courts and driveways. Storm water runoff from dwellings will be drained via cellular soakaway tanks where infiltration is feasible.*

*A positive connection will be made to the existing surface water network with a flow control system in place to limit the peak flows.*

*Any surface water that cannot exit the site in storm events will be attenuated on site via attenuation basins within the public open space and village green areas.'*

**Surface Water Management:**

*'The main surface water piped network will be run within the adoptable highway on site and be offered to Anglian Water for adoption under a Section 104. The drainage will be built to the standards required within Sewers for Adoption 6th Edition. All maintenance for these elements of the surface water system will be the responsibility of David Wilson Homes (the Applicant) until such times as the network is adopted after which all maintenance obligations will transfer to Anglian Water.*

*Area of permeable paving to private drives, parking courts and driveways will be privately conveyed and the maintenance of these areas will be transferred accordingly.*

*The subsequent infiltration tanks and attenuation basins within the public open space areas will be transferred to the private management company along with relevant maintenance obligations.'*

5.2.4 Essex County Council (Lead Local Flood Authority (LLFA)) has been consulted however no formal response has been received regarding to this current Discharge of Condition application. It is important to note that LLFA was consulted previously on Discharge of Condition application DET/MAL/17/05154 and having assessed the submitted above documents which accompanied that planning application, LLFA had raised no objection in relation to the principle of the maintenance of the surface water drainage system. Having regard to the additional advice that has been received from Anglian Water and the advice that is expected to be provided at the committee meeting, it is expected that the advice of the statutory consultees will be able to be afforded more weight and as such it is considered that there will be grounds to enable the discharge of the condition.

### **5.3 Condition 13 of OUT/MAL/14/01016**

5.3.1 Condition 13 states:-

*'No development approved by this permission shall be commenced until a scheme for the improvement of the existing foul and surface water drainage system has been submitted to and approved in writing by the local planning authority. The scheme needs to set out the phasing of the development in terms of dwellings built and occupied alongside the foul and surface water system improvements needed. The scheme shall be implemented as approved. No occupation of dwellings approved by this permission shall occur until each phase of the scheme for improvement of the*

*existing foul and surface water drainage system has been completed and confirmation obtained of available permitted capacity in the network and at the treatment works'*

5.3.2 To discharge the above planning condition, the Applicant has submitted the following information:-

- 132915-R3 (0) – Drainage Statement Site A
- 132915-R5 (00) – SuDS Calculations Site A
- 307 P5 – SuDS Strategy Layout
- 308 P4 – Foul Drainage Strategy
- North Fambridge Phasing Plan – 14-03-2018

#### 5.3.3 Foul Drainage

5.3.3.1 In January 2014 a joint Drainage Position Statement issued by The Environment Agency, Anglian Water Services (AWS) and Essex County Council SUDS Team in response to a consultation from Maldon District Council concerning the availability of infrastructure capacity in the Latchingdon Waste Water Treatment Works catchment to serve 800 new homes. This consultation included the 105 homes on the North Fambridge sites, comprising this site and the one at nearby Manor Farm. In summary, this statement concluded that the additional wastewater from 800 homes could not be treated at Latchingdon.

5.3.3.2 Further assessment was carried out, with the most recent being the statement prepared in November 2017 which is included at **APPENDIX 1**. In comparison to the first assessment, it is advised that the reduced number of dwellings, from 800 to 105, could be mitigated by providing storage capacity on site (and with some local additional storage at the nearby Avenue Pumping Station) to ensure that the additional waste water would only be discharged at times of day when there is capacity in the sewer network. During any times of day when the sewer flows reach their peak level, the waste would be stored there, until the peak flow levels fall to an acceptable level.

#### 5.3.4 Mitigation Works

5.3.4.1 The Development Impact Assessment (DIA) considered the site specific implications of collecting and treating the new flows from this site and the associated Manor Farm development. It concluded that the potential adverse impact of the new waste water flows could be mitigated by a combination of onsite and offsite measures. In addition, no properties on this site could be connected to the sewer until the on and offsite mitigation are in place.

5.3.4.2 It is proposed that a new on-site pumping station will be provided with upstream below ground tanks with a capacity of 68m<sup>3</sup> to store the wastewater until it is pumped to the Avenue Road Pumping Station, but only at the times of day when there is capacity in the existing sewer network. Suitable times for pumping will be monitored using Real Time Controls (RTC) which will remotely sense flows in the downstream sewer, which will trigger the pumped discharge, but only when capacity is available. With respect to this solution it is noted that correspondence from Anglian Water dated 14/05/18 set out the following:

*“Real Time Control (RTC) or Inhibit Control systems have only fairly recently been adopted by Anglian Water as a satisfactory method for providing an effective and cost efficient foul water mitigation solution. The strategy envisages a control interface linking the discharge from the development to restrict discharge to the existing foul water network during conditions where it is inundated with surface water. In this case the development conveyance pumping station would be inhibited by levels monitored in the sewerage adjacent The Avenue pumping station. Storage within the development drainage may be located within the conveyance pumping station wet well, development foul water drainage suitably oversized, a dedicated storage tank or a combination of these. The storage volume will be sufficient to restrict discharge from the larger of the development sites for up to 24 hours. Although a relatively recent approach, this type of solution is being widely employed across the UK; Anglian Water currently operates upwards of 200 installations across our area.”*

5.3.4.3 Similarly, outside the site curtilage at Avenue Road, some local additional underground retention storage (33m3) will be provided to hold the waste at the pumping station for this site and Manor Farm (**RES/MAL/17/00766**, **DET/MAL/17/05142**, and **DET/MAL/18/05092**), before it can be pumped away, via the sewer under Fambridge Road for recycling at Latchingdon Sewage Works, when the peak flow levels fall to an acceptable level. If the existing sewer network capacity is restricted for an extended period, the storage capacity provided would be sufficient to store the average hourly flow from the development (Dry Weather Flow) for up to 35 hours. However if the tanks fill to their capacity another form off disposal would be required e.g. tankering off site.

### 5.3.5 Maintenance of Foul Water Infrastructure

5.3.5.1 The off-site works at Avenue Road will be funded by the developer using the Sewer Requisition Procedure under Section 98 of the Water industry Act. Anglian Water will design and construct these works. The on-site works will be designed and constructed by the developer in accordance with details that will be approved by Anglian Water under Section 104 of the Water Industry Act. Anglian Water will supervise the works to ensure that they are constructed in accordance with their specification.

5.3.5.2 It has been confirmed that after the works are satisfactorily completed and a twelve month maintenance period has elapsed, the on-site works, including the tanks and pumps, will be operated and maintained by Anglian Water along with the Avenue Road pumping station and the downstream infrastructure which connect to Latchingdon.

### 5.3.6 Surface Water Drainage

5.3.6.1 With regard to the surface water drainage, it has been noted that there have been surface water flooding incidents in North Fambridge, however these are not due to flooding from rivers but the low permeability of the underlying soils in the area can lead to uncontrolled surface water run-off from undeveloped agricultural land during more extreme rainfall events, particularly in circumstances where the catchment is already saturated. This could cause ponding in low-lying areas if the ditches and watercourses are not maintained to permit this water to flow freely downstream into the river system. It is the riparian owners' responsibility (person who own land or

property next to a river and have responsibility to enable flow without obstruction), under the scrutiny of the Lead Local Flood Authority (Essex County Council), to clear any blockages of these ordinary watercourses. In this case the main outfall from the site is via the culvert under Fambridge Road in the south east corner of the site, which is almost completely blocked.

5.3.6.2 The sustainable drainage strategy for this site would include a mix of interconnected drainage features that include garden soakaways, permeable paving filter drains, swales, wetland and infiltration/attenuation basins. The discharge from these features will be controlled near the point where it flows into the existing culvert under Fambridge Road. The control feature will be a vortex flow device e.g. Hydrobrake. Vortex controls provide are reliable low maintenance flow management mechanism because they have no moving parts and they are designed to minimise the risk of blockages. Through natural filtration, this system will also enhance the quality of water that flows from the site and it will enhance the value of the amenity land within the development.

### 5.3.7 Maintenance of Surface Water Drainage

5.3.7.1 The upstream on-site drainage features will be suitable for adoption and future maintenance by Anglian Water Services. However, the downstream features within the eastern amenity space will be managed in perpetuity by a residents' management company. This body will also maintain the landscaping in this area of the site.

### 5.3.8 Conclusion

5.3.8.1 Based on the above, the Applicant has concluded that the Drainage Statement Site A (132915-R3 (0)) dated 13 July 2017 has demonstrated that a robust foul drainage impact mitigation strategy has been agreed with the Anglian Water Services, which is the drainage authority responsible for the conveyance and treatment of wastewater flows. This strategy will include both on-site and off-site storage and a real time control system to ensure that there will be no increase in foul sewer flood risk due to the development. The mitigation scheme must be implemented before any new properties are occupied. In addition, a sustainable surface water drainage strategy has been agreed in principle with the Lead Local Flood Authority (LLFA, Essex County Council) and the Environment Agency. This drainage strategy will reduce the pre-development risk of flooding to the roads and downstream properties by restricting the post-development discharge to the average annual flow rate and by removing the blockage from the existing culvert. It is noted that the EA are keen to seek additional confirmation that the improvement works will be in place prior to the occupation of any dwellings, but in this regard it is considered that comfort can be drawn from the fact that the condition states "No occupation of dwellings approved by this permission shall occur until each phase of the scheme for improvement of the existing foul and surface water drainage system has been completed and confirmation obtained of available permitted capacity in the network and at the treatment works"

### 5.3.9 Anglian Water Services (AWS)

5.3.9.1 The latest correspondence from Anglian Water Services dated 11 July 2018 has advised that the foul and surface water drainage scheme is considered to be acceptable. Moreover, they are satisfied that the strategy as submitted is, as far as

reasonably practicable, effective in dealing with the proposed foul flows from the development.

5.3.9.2 AWS have worked with the developer to ensure a drainage strategy has been produced which ensures that no detriment is caused to the existing operational performance by the flows from the proposed development. Therefore AWS recommends that Condition 13 is discharged in full.

5.3.9.3 As part of the Discharge of Condition application, the Applicant has provided Maldon District Council with a phasing strategy for the development which sets out that the pumping station and drainage connection will be provided prior to the first occupation of a dwelling at the site. Anglian Water Services have also considered the Phasing and Delivery Plan dated 14 March 2018 which forms a part of Condition 13 and has considered that the phasing element of this condition has been met. The on-site and off-site drainage works will be undertaken in line and completed ahead of the first occupation. In relation to the Waste Water treatment, it is not Anglian Water's practice to seek to hold the developer liable through the planning system for the funding of any infrastructure upgrades to water recycling centres (WRC) or to solve existing issues. Investment in WRC is triggered by a number of risks, including growth and regulatory changes and process deterioration. The growth element of the future risk is known, therefore AWS are satisfied that this element of the condition can be discharged as the prioritisation has commenced.

#### 5.3.10 Conclusion

5.3.10.1 On the basis of the advice received from AWS, it is considered that the surface and foul water drainage scheme is adequate. Therefore Condition 13 of outline planning permission OUT/MAL/14/01016 can be discharged.

### 5.4 **Condition 17 of OUT/MAL/14/01016**

5.4.1 Condition 17 states:

*'Prior to commencement of the development details showing the means to prevent the discharge of surface water from the development onto the highway shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in its entirety prior to the access becoming operational and shall be retained at all times'*

5.4.2 In email correspondence dated 20 December 2017 for the previous Discharge of Condition application (**DET/MAL/17/05154**), ECC Highway Authority had confirmed that they have assessed the following information submitted by the Applicant with regard to details showing the means to prevent the discharge of surface water from the development onto the highway:-

- 307 P5 – SuDS Strategy Layout
- 132915-R1 (0) Flood Risk Assessment Site A
- 132915-R3 (0) Drainage Statement Site A
- 132915-R5 (00) SuDs Calculations Site A

5.4.3 Based on the above information submitted, the Highway Authority has no adverse comments to make with regard to the discharge of Condition 17, but reminds the Applicant that the discharge of this condition does not absolve the developers' obligations under S38/278 for drainage details to be technically agreed with the Highway Authority. Insofar the details submitted it is considered that this condition can be discharged.

## 5.5 Condition 31 of OUT/MAL/14/01016

5.5.1 Condition 31 states:

*'No development shall commence until a detailed wastewater strategy has been submitted to and approved in writing by the local planning authority. The development shall be carried out in complete accordance with the approved details and retained as such thereafter'*

5.5.2 Condition 31 in relation to wastewater strategy was recommended by Anglian Water Services (AWS) in the 2014 outline planning application. Condition 31 is caveated by Condition 32 which reads *'pursuant to condition 31 above, no dwelling hereby approved, or approved as part of the reserved matters referred to in condition 1 of this permission, shall be occupied until the wastewater strategy has been carried out in complete accordance with the approved details'*.

5.5.3 For Condition 31, the Applicant has submitted the following documents to the Council for consideration:-

- 132915-R3 (0) Drainage Statement Site A

5.5.4 Based on the document submitted by the Applicant, it was concluded that the Drainage Statement has demonstrated that a robust foul drainage impact mitigation strategy has been agreed with the Anglian Water, which is the drainage authority responsible for the conveyance and treatment of wastewater flows. This strategy will include both on-site and off-site storage and a real time control system to ensure that there will be no increase in foul sewer flood risk due to the development.

5.5.5 The Applicant acknowledges that the mitigation scheme must be implemented before any new properties are occupied. In addition, a sustainable surface water drainage strategy has been agreed in principle with the Lead Local Flood Authority (LLFA, Essex County Council) and the Environment Agency. This drainage strategy will reduce the pre-development risk of flooding to the roads and downstream properties by restricting the post-development discharge to the average annual flow rate and by removing the blockage from the existing culver.

5.5.6 The Environment Agency (EA dated 12 January 2018) has noted that this wastewater strategy condition was recommended by Anglian Water Services and therefore expects this to take into account the permitted capacity position at Latchingdon treatment works. As stated above Condition 31 is caveated by Condition 32 which requires physical works to have been carried out and being operational prior to the dwellings being occupied and therefore it is considered that the latest request from the Environment Agency in respect of clarification as to when works will be undertaken to improve the existing capacity is dealt with by this condition.

5.5.7 A consultation response was received by Anglian Water Services (AWS) dated 11 July 2018 which clarifies that a wastewater strategy is referring to the Water Recycling Centres (WRC) and AWS are responsible for all and any upgrades to the WRC. Anglian Water Services have advised that it is not their practice to hold the developer liable through the planning system for the funding of any infrastructure upgrades to Water Recycling Centres (WRC). Investment in WRC is triggered by a number of risks, including growth and regulatory changes and process deterioration. The growth element of the future risk is known, therefore AWS are satisfied that the condition can be discharged as invest prioritisation has commenced.

5.5.8 AWS will plan and invest accordingly in WRC and advised that it is not for the developer to make provision for this. It is therefore advised that planning condition 31 can be discharged in this respect.

## **5.6 Condition 33 of OUT/MAL/14/01016**

5.6.1 Condition 33 states:

*'No development shall commence until a foul water strategy has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in complete accordance with the approved details and retained as such thereafter'*

5.6.2 Condition 33 in relation to foul water strategy was recommended by Anglian Water Services (AWS) in the 2014 outline planning application. Condition 33 is caveated by Condition 34 which reads *'pursuant to condition 33, no dwelling hereby approved, or approved as part of the reserved matters referred to in condition 1 of this permission, shall be occupied until the foul water strategy has been carried out in complete accordance with the approved details'*.

5.6.3 For Condition 33, the Applicant has submitted the following documents to the Council for consideration:-

- 132915-R3 (0) – Drainage Statement Site A
- 308 P5 – Foul Drainage Strategy

5.6.4 Based on the document submitted by the Applicant, it was concluded by the applicant that the Drainage Statement has demonstrated that a robust foul drainage impact mitigation strategy has been agreed with the Anglian Water, which is the drainage authority responsible for the conveyance and treatment of wastewater flows. This strategy will include both on-site and off-site storage and a real time control system to ensure that there will be no increase in foul sewer flood risk due to the development.

5.6.5 The Applicant again acknowledges that the mitigation scheme must be implemented before any new properties are occupied. In addition, a sustainable surface water drainage strategy has been agreed in principle with the Lead Local Flood Authority (LLFA, Essex County Council) and the Environment Agency. This drainage strategy will reduce the pre-development risk of flooding to the roads and downstream properties by restricting the post-development discharge to the average annual flow rate and by removing the blockage from the existing culver.

5.6.6 The Environment Agency has previously noted that this foul water strategy condition was recommended by Anglian Water Services and therefore expects this to take into account the permitted capacity position at Latchingdon treatment works. Condition 33 is caveated by Condition 34 which requires physical works to have been carried out and being operational prior to the dwellings being occupied.

5.6.7 A consultation response was received by Anglian Water Services dated 14 March 2018 stating that the purpose of the foul water drainage strategy is to establish a method of connecting the development flows without creating additional detriment to the operation of the sewerage pipes / system. In response to a pre-planning enquiry, AWS undertook a desktop assessment that identified a network reinforcement solution in support of the outline planning application. Following their achieving outline planning approval Barratt David Wilson Homes (BDW) approached AWS to carry out a detailed assessment of their proposed drainage strategy (including the new pumping station design) and of any potential detriment caused by their proposal. BDW entered into a S98 Underwriting Agreement with AWS that allowed this assessment to be completed to ensure that the required S98 works could be completed ahead of their first occupation.

5.6.8 This detailed analysis has provided an alternative, more reliable solution employing storage upstream of the connection point and discharge control on the development pumping station. This provides a more effective mitigation of the predicted additional risk posed by the development. The agreed foul water strategy employs a control on the development pumping station to ensure that the development only discharges when there is sufficient capacity within the foul water network. The onsite drainage has been designed to provide sufficient storage capacity to accommodate flows while the discharge is inhibited.

5.6.9 Under the terms of the S98 agreement the onsite elements of the work will be completed by BDW and the offsite works will be completed by AWS. BDW will install additional storage within the development site. The discharge control will be installed by AWS under the S98 sewer requisition scheme and delivery of this off-site work will be programmed to coincide with the onsite works to ensure that they are completed ahead of the first occupation.

5.6.10 The onsite infrastructure and pumping station has been submitted to Anglian Water for adoption, under a Section 104 agreement. Anglian Water will adopt this infrastructure and will therefore operate, control and maintain said infrastructure. As the developer will provide the additional storage capacity to enable this strategy the foul water drainage conditions in respect of this site can be discharged. It is therefore advised that Condition 33 can be discharged in this respect.

5.6.11 Based on the above submission, the strategy submitted has drawn on extensive modelling and analysis and sufficient mitigation is planned. Therefore AWS has recommended that Condition 33 of OUT/MAL/14/01016 is discharge in full.

## 6. **ANY RELEVANT SITE HISTORY**

- **OUT/MAL/14/00186** - Outline planning application for up to 75 market and affordable dwellings, a village centre of up to 1,000 sq m of flexible

commercial and community floor space and a 1.8ha village green and public open space. Refused: 11 August 2014

- **OUT/MAL/14/01016** - Outline planning application for up to 75 market and affordable dwellings, a village centre of up to 1,000 sq m of flexible commercial and community floor space, a 1.8ha village green and public open space. Approved: 18 March 2016
- **RES/MAL/17/00776** - Reserved matters application for the approval of access, appearance, landscaping, layout and scale on approved planning application **OUT/MAL/14/01016** (Outline planning application for up to 75 market and affordable dwellings, a village centre of up to 1,000sqm of flexible commercial and community floor space, a 1.8ha village green and public open space.) Approved: 6 February 2018

## 7. CONSULTATIONS AND REPRESENTATIONS RECEIVED

### 7.1 Representations received from Parish / Town Councils

Name of Parish / Town Council	Comment	Officer Response
North Farnham Parish Council	<ul style="list-style-type: none"><li>• Insufficient capacity at Latchingdon Water Recycling Centre</li><li>• Same set of documents are being resubmitted with this application with very little new information from the developer</li><li>• The use of tankers as is not acceptable</li><li>• A strategy should show committed actions, timescales, and funding sources; none of these have been addressed by Anglian Water's responses</li><li>• The reassurances from Anglian Water that they will do what is required by the situation does not constitute a strategy</li></ul>	Noted in the officer report

## 7.2 Statutory Consultees and Other Organisations

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
ECC Highway Authority	No adverse comments to make, but please note that any discharge permission given does not absolve the developers obligations under S38/278 for drainage details to be technically agreed	Noted in the report
ECC Sustainable Drainage Systems (SUDs)	No response received at the time of writing this report. Any comments received will be reported on the Members Update.	The LLFA was consulted previously on Discharge of Condition application DET/MAL/17/05142 and having assessed the submitted above documents which accompanied that planning application, LLFA had raised no objection in relation to the principle of the maintenance of the surface water drainage system. The submissions are no different and therefore weight can be afforded to the original response.
Environment Agency	Conditions 12, 13, 31 and 33 can be discharged but they wish additional confirmation that the improvements to Latchingdon Water Recycling Centre will be in place.	Noted in the report
Anglian Water Services	Conditions 12, 13, 31 and 33 can be discharged.	Noted in the report. The content of their latest submissions is also included at <b>APPENDICES 2 and 3</b> .

### 7.3 Internal Consultees

Name of Internal Consultee	Comment	Officer Response
Environmental Health Services (EHS)	EHS need to be satisfied that no residents will be adversely affected by noise and odour from the siting of the tanks and pumping station before the conditions can be discharged.	Ac condition to address this matter was imposed under the terms of the reserved matters application. A discharge of condition application in relation to this matter (DET/MAL/18/05041) was refused under delegated powers on 15/05/18.

### 7.4 Representations received from Interested Parties

7.4.1 No letters received.

## 8. RECOMMENDATION

That the following conditions be **DISCHARGED**:

Conditions	Discharged
12	Yes
13	Yes
17	Yes
31	Yes
33	Yes

**From:** Wilson Hannah [<mailto:hWilson4@anglianwater.co.uk>]  
**Sent:** 13 November 2017 12:02  
**To:** Yee Cheung  
**Subject:** Fambridge

Dear Yee Cheung

Please find attached Anglian Waters briefing note in relation to Land off The Avenue and Manor Farm, North Fambridge.

If you have any questions please contact me.

Kind regards,  
**Hannah Wilson**  
Pre-Development Planning Manager

**Developer Services**  
**Anglian Water Services Limited**  
Tel Office: 0345 60 66 087 Option 1  
Mobile: 07885135312  
Thorpe Wood House, Thorpe Wood, Peterborough, PE3 6WT  
[www.anglianwater.co.uk](http://www.anglianwater.co.uk)



## Pre-development Briefing Note

**Development Site:** Land off The Avenue and Manor Farm, North Fambridge  
**AWS Site Reference:** S-2977  
**Purpose:** Planning condition  
**Date:** 10<sup>th</sup> November 2017

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### 1.0 Preface

This assessment has been undertaken to provide an up to date and site specific foul water drainage strategy for the development proposed by David Wilson Homes on land off The Avenue and Manor Farm, North Fambridge.

This assessment supersedes the earlier assessment undertaken at pre-planning stage in December 2015. The purpose of assessment at the pre-planning stage is to specify the solution that can be determined with most certainty ahead of detailed design.

Subsequent to outline planning approval more detailed analysis was underwritten by the developer. This has provided more reliable definition of the potential deficit, employing additional analytical techniques that are not available to the pre-planning assessment.

Whereas the pre-planning assessment will generally emphasise a single connection scenario and one feasible mitigation solution, the more detailed analysis will allow for a range scenarios and consider alternative solutions.

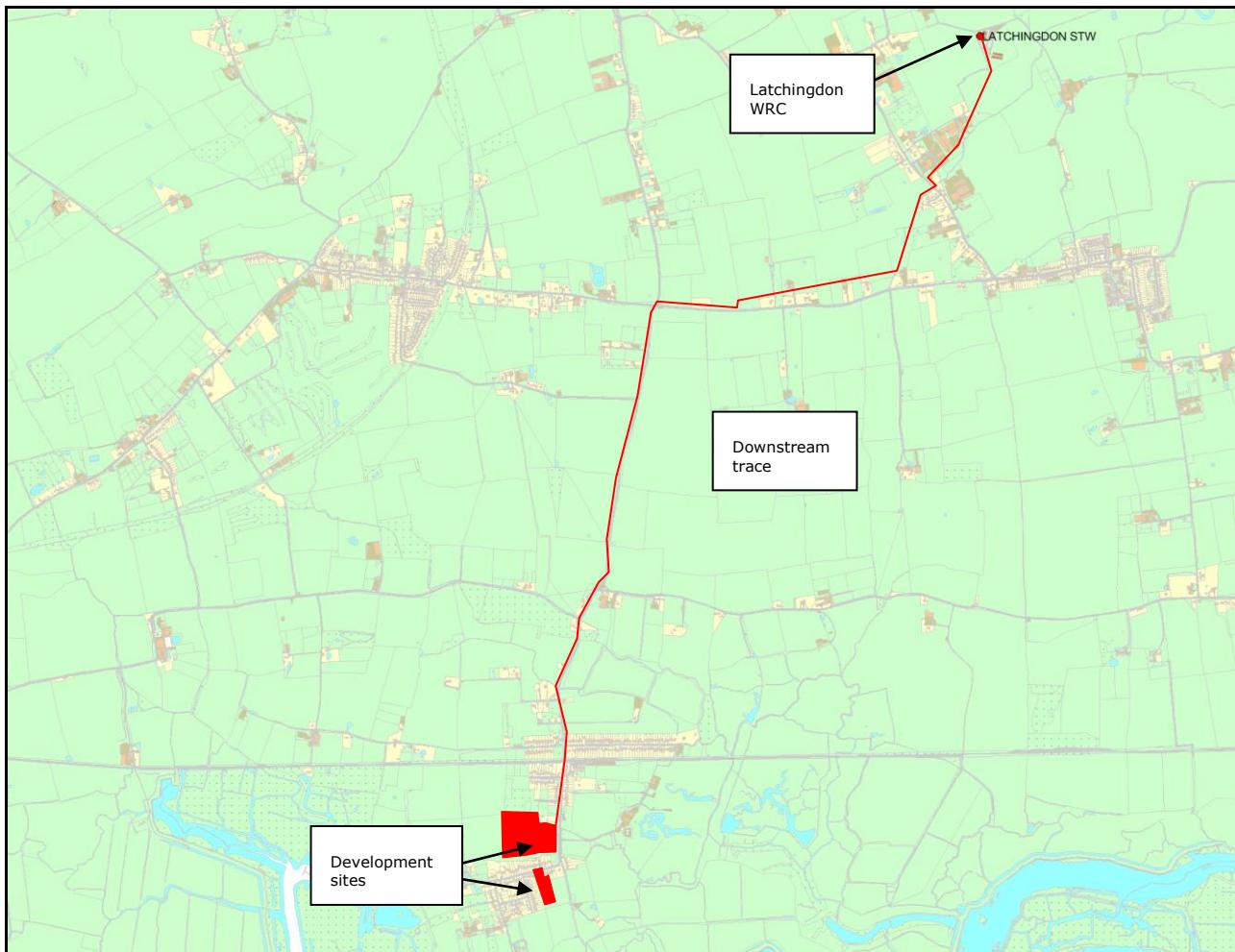
### 2.0 Development details

This is a residential development comprising two parcels of land to a total of 105 residential properties (30 and 75 respectively) in land off The Avenue, North Fambridge.

The development site is approximately 5km from Latchingdon Water Recycling Centre (WRC). The sewerage network to which the development will connect is shown in Figure 1 below.



## Pre-development Briefing Note



**Figure 1 showing the development site and downstream trace of the sewerage network to the WRC**

### 2.1 Latchingdon water recycling centre

Foul water from the development site will drain to the catchment served by the Latchingdon Water Recycling Centre (WRC). The WRC operates under a dry weather flow permit with reference to a hydraulic flow rate and a sanitary consent standard that specifies limits for specific contaminants in the treated effluent discharged.

Our current calculation indicates that there is insufficient hydraulic capacity, within the dry weather flow permit to receive the development flows.

Although the WRC process may still have hydraulic capacity, the assumptions around the implications for water quality in the receiving watercourse would no longer be certain. Therefore a prevailing exceedence of the dry weather flow permit will trigger a review of the sanitary consent standard, which may ultimately necessitate some increase in the process capacity at the WRC.

In contrast to network detriment, where the outcome of exceeding hydraulic capacity in sewerage can be accurately defined, the impact on water quality of exceeding the



## Pre-development Briefing Note

dry weather flow permit is dependant upon a much wider range of factors. The permit will reflect a number of assumptions relating to the strength or characteristics of the sewage and the prevailing condition of the receiving watercourse.

Investment to increase process capacity would follow a position agreed with the Environment Agency and involve analysis over a much longer period than usually required for sewerage network detriment. Discussion toward this agreed position would begin when reliably predicted growth or outline approved development is calculated to exceed the dry weather flow permit.

Such investment as is deemed necessary will be prioritised, in consultation with the Environment Agency, with reference to the level of risk posed and the allowable funding constraints. The investment will also form part of a wider treatment strategy for the WRC that will also address changing environmental conditions and asset deterioration.

This composition of investment needs is reflected in the WRC Asset Plan and it is the purpose of pre-development assessments to ensure that the proposed growth is accounted for in the Asset Plan for Latchingdon WRC.

It is Anglian Water's responsibility to ensure that the Asset Plan and consequent investment planning is sufficiently robust to sustain an effective treatment strategy at Latchingdon WRC.

### 2.2 Calculated flow rates

From the development composition detail provided, the calculated flow rates for each scenario are as follows:

DWF Calculations				
	Attribute	Value	Totals	Unit / Calculation
A	Residential dwellings	105		No.
B	Residential occupancy	2.35		No.
C	Residential population (P)	247		No. (A x B)
D	Residential PCC (G)	125		l/h/d
E <sub>avg</sub>	Residential demand - Average		<b>0.36</b>	l/s (C x D)/86400
E <sub>peak</sub>	Residential demand - Peak		<b>0.76</b>	l/s (E <sub>avg</sub> x 2.12)
F	Infiltration		<b>0.09</b>	l/s (0.25 x E <sub>avg</sub> )
O <sub>avg</sub>	<b>Total Discharge - Average</b>		<b>0.45</b>	l/s(O <sub>avg</sub> + F)
O <sub>peak</sub>	<b>Total Discharge - Peak</b>		<b>0.85</b>	l/s(O <sub>peak</sub> + F)

Table 1: Calculated flow rates for each Scenario

The occupancy and consumption rates used in the flow calculations reflect research undertaken across the UK water industry. These rates along with the factors applied for infiltration and peak flow are incorporated into the design standard that Anglian Water applies across our region.

There is not evidence to justify deviation from these standards in this case.



## Pre-development Briefing Note

### 2.3 Connection point

The proposed connection point for the Manor Farm parcel is manhole TQ8597 4201 (NGR TQ8543897250) just outside the site entrance located in The Avenue (see Figure 2). The diameter of the sewer to which the proposed development will connect is 150mm. A gravity connection is feasible for this parcel.

The proposed connection point for the northern parcel is manhole TQ8597 5301 (NGR TQ8554597318) the manhole immediately upstream of The Avenue PS (see Figure 2). The diameter of the sewer to which the proposed development will connect is 150mm.

A review of the site topography indicates that a gravity connection is not viable for the whole development area and a pumped conveyance would be required.

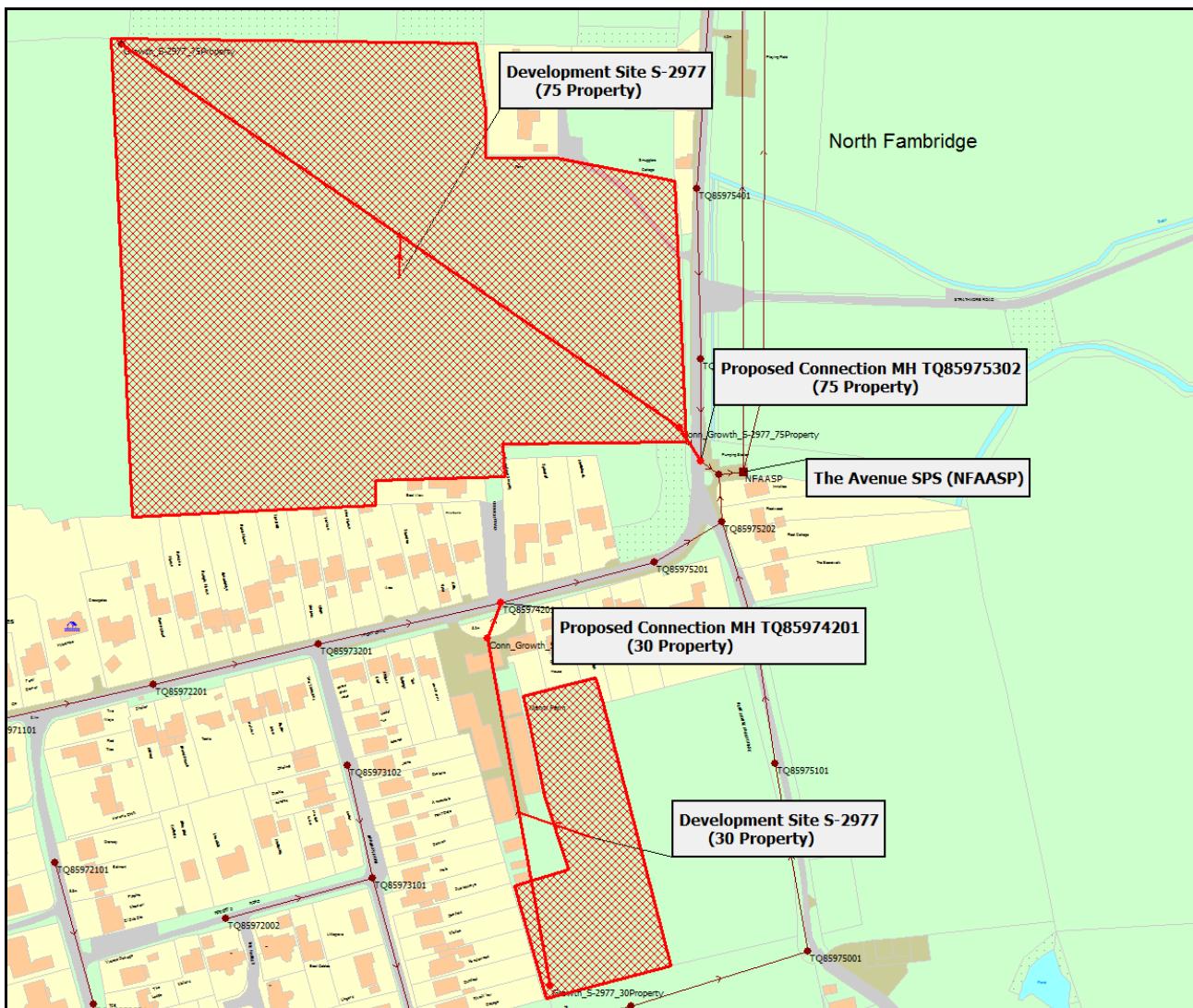


Figure 2 showing the proposed connection points in relation to the development parcels



## Pre-development Briefing Note

### 2.4 Sewerage network

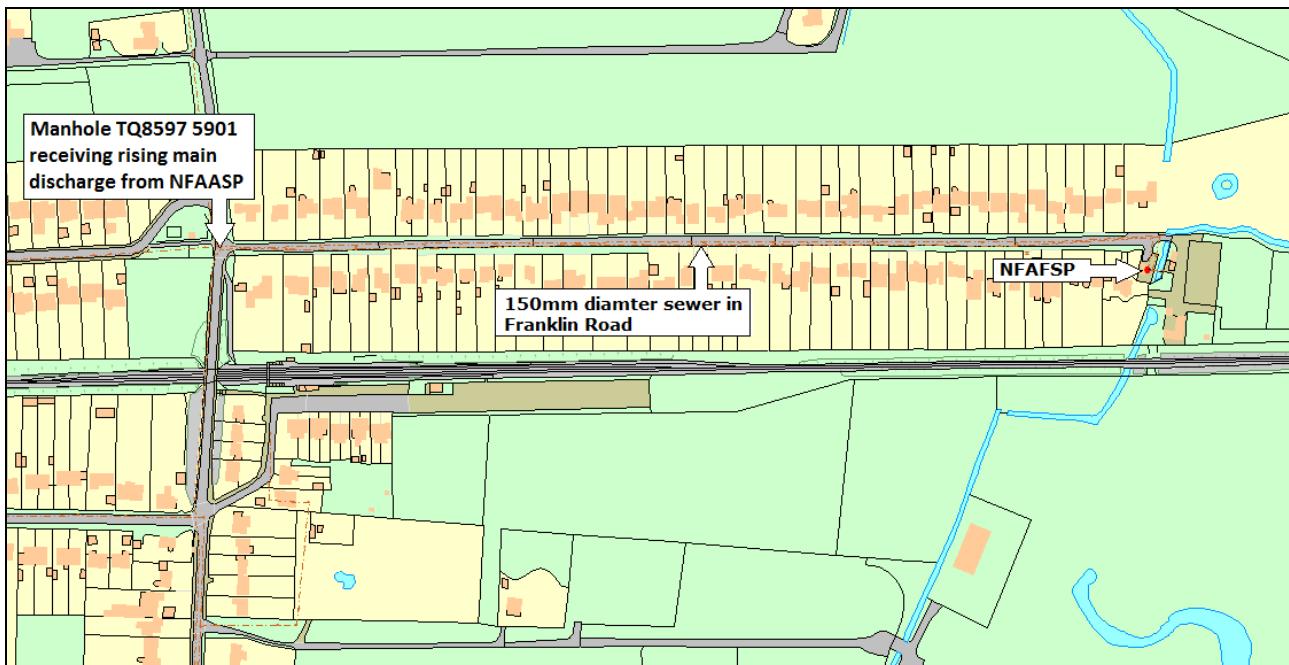
The network to which this development will connect is a combined system, serving foul and surface water. As such it is susceptible to surcharging during storm conditions.

The immediate network drains to The Avenue pumping station (NFAASP), located close to the connection manholes. The pass forward flow rate at NFAASP is 4.8 l/s. The rising man from NFAASP discharges approx. 595m to the north at m/h TQ8597 5901 (NGR TQ8556697912), located in the junction of Fambridge Road and Franklin Road.

There is no directly linked combined sewer overflow at NFAASP, so storm conditions will surcharge the upstream sewerage and cause the pump events to increase in duration as the additional flow is passed forward to the sewer in Franklin Road.

The sewer in Franklin Road is formed of 150mm nominal bore pipework and discharges at the Franklin Road pumping station (NFAFSP), located at the eastern end of the road. The pass forward flow rate at NFAFSP is 12.9 l/s. The rising man from NFAFSP discharges to the sewerage on Cold Norton Road approx. 3km to the north.

In storm conditions, flows in excess of this pass forward rate at NFAFSP will spill to a watercourse via a consented CSO.



**Figure 3 showing the immediate network draining to Franklin Road pumping station (NFAFSP)**

The development site is approximately 5km from Latchingdon Water Recycling Centre (WRC).



## Pre-development Briefing Note

### 3.0 Analysis results

In order to evaluate the impact of this development on the existing network, the analysis has examined the hydraulic performance of the network when the development flows connect during a storm event.

For flood risk analysis the model runs used a 20 year critical length storms for the standard range of durations up to 1440min to establish the baseline condition, against which the future scenarios were tested. Overflow operation analysis is based on an average of 10 year time series rainfall (TSR) data.

Solutions for detriment mitigation are based on 30 year storm events.

#### 3.1 Baseline hydraulic performance

The baseline condition before the development flows connect indicates that the existing network discharging to NFAASP is susceptible to high surcharge conditions during the critical storm. The model predicted flooding during 20 year design storm event at two points close by The Avenue PS.

This flooding prediction is not corroborated by reported incidents and given its extent, this is considered to be an over-prediction and further historical verification would be required to establish a more reliable quantity.

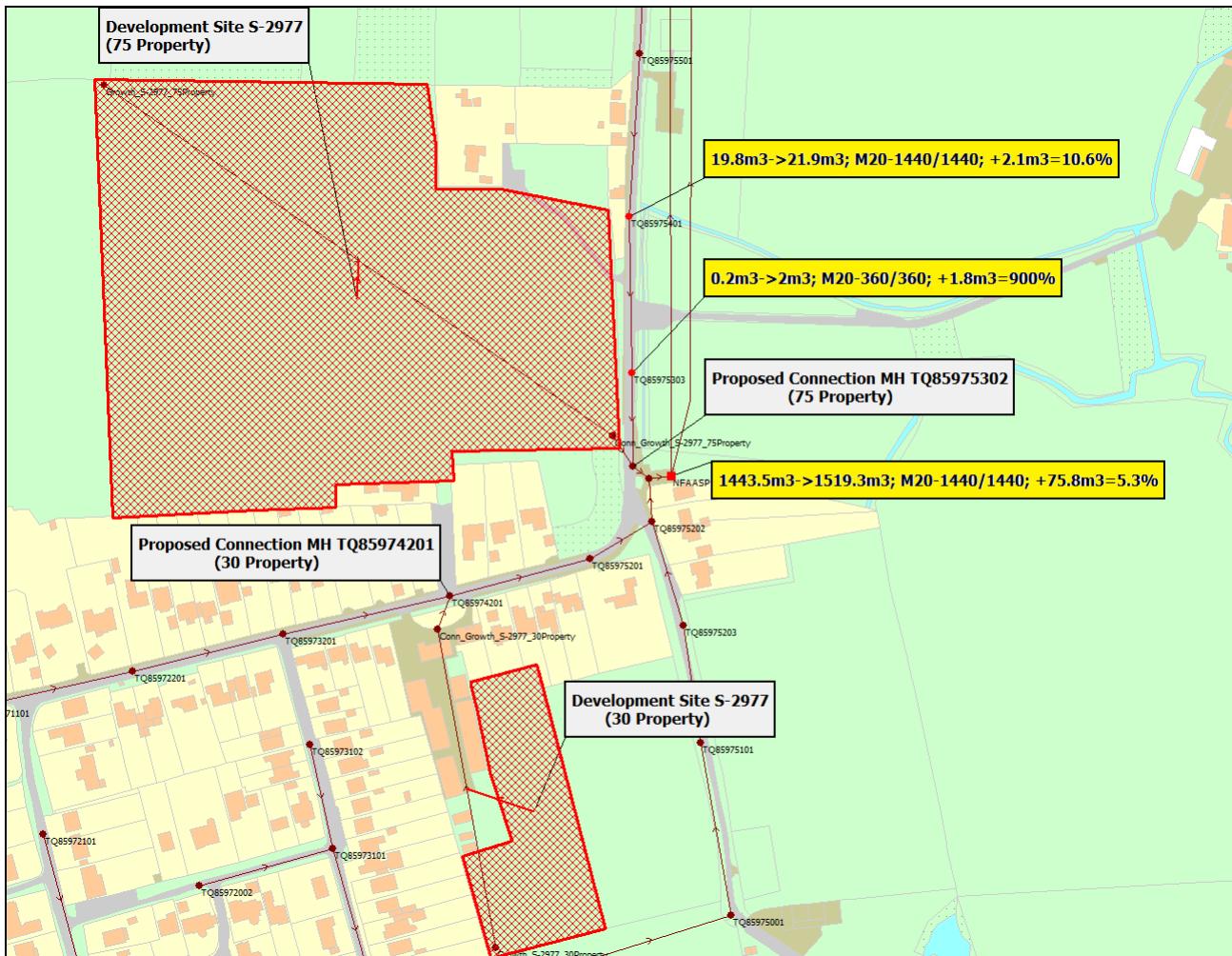
#### 3.2 Predicted detriment - flooding

The detriment analysis assumes that the development is generating flow at the peak dry weather rate during the critical storm condition.

With the development flows added, the model predicted flooding detriment at 3 locations. The largest increase in flooding is at NFAASP; the predicted volume of 75.8m<sup>3</sup> represents a 5.25% increase on the baseline prediction (see Figure 4).



## Pre-development Briefing Note



**Figure 4 showing the extent of predicted flood detriment with the development connected**

The flooding detriment results mainly due to the pass forward flow capacity of NFAASP. The predicted increase in flooding at the three locations is considered to be of high risk and mitigation would be needed to resolve this.

### 3.3 Predicted detriment – overflow and water quality

There is only one overflow within the network that is impacted by the development flow. This is located at NFAASP at the eastern end of Franklin Road. The model has been assessed using 10 year TSR event. The assessment is detailed below.

CSO/EO (Spill link)	Average of 10 years (per year)					
	Baseline		Future		Increase	
	Spill frequency	Spill volume (m³)	Spill frequency	Spill volume (m³)	Spill frequency	Spill volume (m³)
North Cambridgeshire-Franklin Road SP (NFAASP) EO (TQ86971902.2)	0.300	3.702	0.200	3.89	-0.100	+0.188 (+5.078%)

**Table 2: Effect of the growth site S-2977 on overflows compared to base model.**



## Pre-development Briefing Note

This increase reflects the marginal increase in pump running at NFAASP to convey the additional flows generated by the development during the storm event. An increase in excess of 1% would generally be considered sufficient to justify mitigation; however, this increase in spill volume is negligible and would be considered to be of low risk.

### 3.4 Residual capacity

Sensitivity analysis indicates that with the 30 units connected by gravity, the level of predicted additional detriment is negligible and below the threshold requiring attention. Therefore the analysis supports the original assessment conclusion that the Manor Farm parcel can be connected before mitigation is required.

## 4.0 Mitigation solutions

Mitigation solutions are designed to prevent detriment to the existing sewerage network performance during a 1 in 30 year critical duration storm event.

The analysis indicates that the foul water connection strategy identified in the original drainage impact assessment (DIA) is viable. This allows for the 30 houses comprising the Manor Farm parcel to connect by gravity at manhole TQ8597 4201 and the 75 houses comprising the northern parcel to connect via pump to manhole TQ8597 5301.

The DIA recommended solution comprised a combination of upstream attenuation with active control on the discharge and network reinforcement at NFAASP as follows:

- Provision of 68m<sup>3</sup> of off-line on-site storage with gravity return to the conveyance pumping station with active control linked to the existing The Avenue PS.
- Provision of 33m<sup>3</sup> of storage The Avenue PS.

### 4.1 Recommended solution

Active discharge control (also referred to as real-time control or RTC) involves using signals from level monitors located downstream of the connection, to inhibit the development conveyance pump operation. This allows the development flows to be stored within the development drainage until the storm condition has abated and the level in the receiving sewer reduced sufficiently to accommodate the discharge from the development.

In this situation the critical receiving sewerage asset is NFAASP, which already has constant level monitoring as part of its existing pump control system.

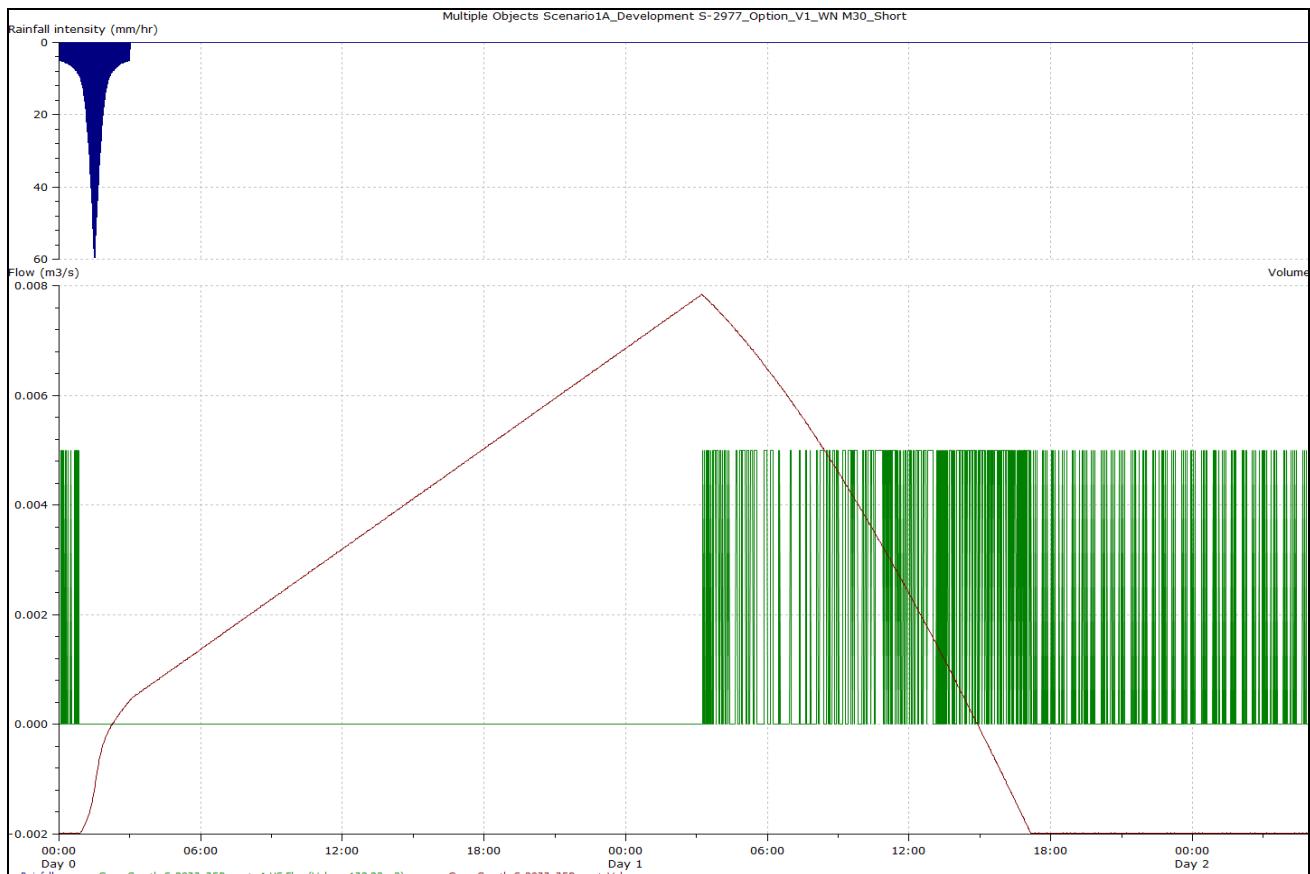
The recommended solution envisages a signals link between NFAASP and the conveyance pumping station on the northern parcel development, so that high wet well levels at NFAASP are used to inhibit the conveyance pump operation.

The analysis indicates that in the critical 30 year event the worst case inhibit duration is almost 23 hours. During this period the development drainage would need to be able to store its flow while the conveyance pump is inhibited. This would require up to 30m<sup>3</sup> of additional storage within the development drainage, which could be utilised



## Pre-development Briefing Note

without surcharging connecting laterals or compromising a free outfall from connected property.



**Figure 5 showing the flow pattern and RTC operation from the conveyance PS during 30 year design event (this assumes a discharge rate of 5 l/s)**

The diagram in Figure 5 above shows the flow and level profile at the conveyance pumping station during this critical storm event. The rainfall profile at the top of the graph represents the storm profile that provides this worst case scenario.

A further refinement on the DIA solution considered a reduced conveyance pump rate. This previous assessment assumed a conveyance pump rate of 5l/s, based on prevailing Anglian Water minimum asset standards favouring rising mains of not less than 100mm nominal bore. Since the DIA was issued, we have undertaken a review of adoptable standards for small developments. We would now take a view that the risk of rising main blockage for smaller bore pipes is not significant at relatively short distances.

Using a smaller rising main bore of 80mm allows for a reduced rate broadly averaging 3.8l/s. With this reduced rate the network reinforcement element of the original DIA solution is no longer required.



## Pre-development Briefing Note

### 5.0 Summary of recommended foul water drainage strategy

The analysis concludes that the Manor Farm (southern) development parcel, comprising 30 houses, should connect by gravity to manhole TQ8597 4201 (NGR TQ8543897250) located in The Avenue. No mitigation solution is required for this parcel.

The northern development parcel in land off The Avenue, comprising 75 houses, should connect via pumped conveyance at 3.8l/s to manhole TQ8597 5301 (NGR TQ8554597318) the manhole immediately upstream of The Avenue PS. This parcel should not be occupied until the following mitigation is installed:

1. Provision of a signal link between NFAASP and the conveyance pumping station control.
2. Configuration of conveyance pumping control to enable an inhibiting of the pump operation based on levels measured at NFAASP.
3. Provision of 30m<sup>3</sup> of additional storage within the development drainage. This may be installed within the wet well or in over-sized upstream sewers.

It is assumed that the developer will install the conveyance pumping station and rising main, along with the storage capacity in *item 3*. Therefore, a requisition scheme under Section 98 Water Industry Act would involve only items 1 and 2 of the recommended solution.

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Head of Planning Services  
Maldon District Council

Sent by email

11 July 2018

**Anglian Water Services Ltd**  
Thorpewood House  
Thorpewood  
Peterborough  
PE3 6WT  
  
Tel 0345 0265 458  
[www.anglianwater.co.uk](http://www.anglianwater.co.uk)  
email:  
hwilson4@anglianwater.co.uk

### **18/05092/DET – Manor Farm**

Thank you for consulting Anglian Water in relation to the above planning application. Our response is in relation to condition 16 – Foul Water Strategy and 29 Wastewater Strategy. This letter is submitted with our full representation in relation to the above conditions. All our previous comments are still valid.

#### **Background**

Anglian Water have been working closely with Barrett David Wilson Homes regarding the site West of Fambridge Road since 2017. Drainage infrastructure improvements have been identified to serve the development site in full. Anglian Water has undertaken detailed modelling work to ensure a mitigation solution has been identified that would be effective in dealing with the proposed flows from the development.

Throughout the planning process Anglian Water has engaged with Maldon District Council and the Environment Agency. A number of additional supporting statements and briefing notes have been provided by Anglian Water, these additional documents provide further details regarding the strategy. All previous correspondence in relation to Land West of Fambridge Road remains valid.

#### **Existing issues in North Fambridge**

Anglian Water are aware of the concerns from both residents and the Parish Council regarding localised flooding and impact of new development on Latchingdon Water Recycling Centre (WRC).

The public sewerage network serving North Fambridge is intended for the drainage of domestic foul water only, for which it does have sufficient capacity. The existing flood risk involving the public foul water sewerage and the potential dry-weather flow exceedance at Latchingdon WRC are related to surface water flows entering the foul sewerage network at many points via direct connections, overland flows and infiltration.

Surface water flows should not be discharged into this foul sewerage network, the network does not have the capacity to convey surface water. It would be inappropriate to seek to accommodate this flow within the foul network. In cases such as this a multi-agency approach is required to understand the full extent of the issues and define possible solutions.

Anglian Water has previously worked with the Environment Agency and Essex County Council in their role as both lead local flood and highways authority, in trying to identify potential measures to address the lack of effective surface water drainage infrastructure in North Fambridge. Anglian Water are now re-starting this partnership working and are offering the technical lead with a wider multi-agency approach for the issues in North Fambridge.

### **Water Industry Act**

The Water Industry Act 1991, section 98 states that we cannot require a developer to provide betterment of the existing network, nor can we require them to provide WRC upgrades. Any infrastructure improvements at Latchingdon WRC will be planned and provided by Anglian Water, we will work with the Environment Agency to ensure investment planning happens at the appropriate time.

### **Conclusion**

In conclusion Anglian Water is satisfied that the strategy as submitted is effective in dealing with the proposed foul flows from the development.

Condition 16 – the strategy submitted has drawn on extensive modelling and analysis which has concluded that the development has no significant impact on the foul network performance. Anglian Water recommends discharge of condition 16 in full.

Condition 29 – Anglian Water will plan and invest accordingly in water recycling centres, it is not for the developer to make provision for this. Anglian Water recommends discharge of condition 29 in full.

If you wish to discuss any aspect of this response please do not hesitate to contact me.

Kind regards  
Regards



Iain Amis  
Head of Development Services



**North Fambridge  
Manor Farm and Land West of the Avenue**

Anglian Water Services Ltd.

July 2018

**Preface**

The purpose of the conditions that we request is to ensure that additional flows do not have a detrimental impact on existing network operational performance.

The analysis has been carried out to provide a drainage strategy which has enabled us to recommend discharge of the following conditions.

Anglian Water Services has an obligation, under Section 98 of the Water Industry Act 1991, to provide a new sewer from the existing sewer network, upon receipt of a sewer requisition. Where it is identified that flows from the new sewer will cause detriment to the existing sewerage network AWS can recover a proportion of the reasonable costs incurred in providing mitigation by way of further sewerage works in consequence of the sewer requisition. Consequential sewers provided in this way are limited in the following ways:

- 1- They may only remove any additional operational risk to the sewerage network caused by the provision of the new sewer, and not more: in other words they can not provide betterment of said network.
- 2- They may not extend to sewerage works intended to rectify an existing deficit in the system. This is because they are provided purely in consequence of the requisitioned sewer.
- 3- It is only sewerage works that may be provided and not treatment facilities. This is because the Act only allows for the provision of a 'sewer' then the developer can not be held liable for costs associated with providing additional capacity at Water Recycling Centre (WRC).

The limit of this statutory obligation has been tested.

Alternatively, if no new sewer is required (and therefore no new requisition made), a developer may simply seek a connection to the existing sewerage network, thus avoiding the sewerage undertaker's ability to provide necessary consequential works at the developer's cost. In these cases, sewerage undertakers generally seek planning conditions to achieve the same effect as the requisition process. Accordingly, the planning conditions we request in respect of an acceptable sewer network are operated to no greater effect than the requisition process; in other words it is operated subject to the same limitations.

**For Manor Farm, North Fambridge (30 C3 dwellings)**

Anglian Water carried out detailed modelling which has confirmed that the connection of flows from this development has no significant impact on the performance of the foul water sewerage system, therefore the foul water drainage conditions in respect of this site can be discharged.

*Anglian Water recommends foul water conditions are discharged in full.*

**For Land West of The Avenue, North Fambridge (75 C3 dwellings).****Condition 13**

*"No development approved by this permission shall be commenced until a scheme for the improvement of the existing foul and surface water drainage system has been submitted to and approved in writing by the local planning authority. The scheme needs to set out the phasing of the development in terms of dwellings built and occupied alongside the foul and surface water system improvements needed. The scheme shall be implemented as approved. No occupation of dwellings approved by this permission shall occur until each phase of the scheme for improvement of the existing foul and surface water drainage system has been completed and confirmation obtained of available permitted capacity in the network and at the treatment works."*

As discussed above, it is not within Anglian Water's power to request the developer to fund improvements to the existing sewerage network beyond that required to address the development only. We have worked with the developer to ensure a drainage strategy has been produced which ensures that no detriment is caused to the existing operational performance by the flows from the proposed development.

BDW have provided Maldon District Council with a phasing strategy for the development. The phasing element of this condition has been met. The on-site and off-site drainage works will be undertaken in line and completed ahead of the first occupation.

Again, as discussed above, in relation to the Waste Water treatment, it is not within Anglian Water's power to seek to hold the developer liable through the planning system for the funding of any infrastructure upgrades to water recycling centres (WRC). Investment in WRC is triggered by a number of risks, including growth and regulatory changes and process deterioration. The growth element of the future risk is known, therefore we are satisfied that this element of the condition can be discharged as investment prioritisation has commenced.

*Anglian Water recommends discharge of condition 13*

**Condition 31 (relating to WRC capacity)**

*"No development shall commence until a detailed wastewater strategy has been submitted to and approved in writing by the local planning authority. The development shall be carried out in complete accordance with the approved details and retained as such thereafter."*

Again, it is not within Anglian Water's power to hold the developer liable through the planning system for the funding of any infrastructure upgrades to water recycling centres. Investment in WRC is triggered by a number of risks, including growth and regulatory changes and process deterioration. The growth element of the future risk is known, therefore we are satisfied that the condition can be discharged as Invest prioritisation has commenced

***Anglian Water recommends discharge of condition 31***

**Condition 33**

*"No development shall commence until a foul water strategy has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in complete accordance with the approved details and retained as such thereafter."*

The purpose of the foul water drainage strategy is to establish a method of connecting the development flows without creating additional detriment to the operation of the sewerage system. In response to a pre-planning enquiry AW undertook a desktop assessment that identified a network reinforcement solution in support of the outline planning application. Following their achieving outline planning approval Barratt David Wilson Homes (BDW) diligently approached AWS to carry out a detailed assessment of their proposed drainage strategy (including the new pumping station design) and of any potential detriment caused by their proposal. BDW entered into a S98 Underwriting Agreement with AWS that allowed this assessment to be completed to ensure that the required S98 works could be completed ahead of their first occupation.

This detailed analysis has provided an alternative, more reliable solution employing storage upstream of the connection point and discharge control on the development pumping station. This provides a more effective mitigation of the predicted- additional risk posed by the development. The agreed foul water strategy employs a control on the development pumping station to ensure that the development only discharges when there is sufficient capacity within the foul water network. The development onsite drainage has been designed to provide sufficient storage capacity to accommodate flows while the discharge is inhibited.

Under the terms of the S98 agreement the onsite elements of the work will be completed by BDW and the offsite works will be completed by AWS. BDW will install additional storage within the development drainage. The discharge control will be installed by AWS under the S98 sewer requisition scheme and delivery of this off-site work will be programmed to coincide with the onsite works to ensure that they are completed ahead of the first occupation.

The onsite infrastructure and pumping station has been submitted to Anglian Water for adoption, under a Section 104 agreement. Anglian Water will adopt this infrastructure and will therefore operate, control and maintain said infrastructure.

As the developer will provide the additional storage capacity to enable this strategy the foul water drainage conditions in respect of this site can be discharged.

***Anglian Water recommends discharge of condition 33***

**Conclusion**

The off-site control will be implemented in line with the developer's programme of on-site works and completed prior to occupation of any dwellings.

Anglian Water are therefore satisfied that the wastewater and foul drainage conditions associated with both manor Farm and land West of The Avenue can be discharged.



**North Farnbridge**

**Manor Farm and Land West of the Avenue**

Anglian Water Services Ltd.

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**Preface**

The purpose of the conditions that we request is to ensure that additional flows do not have a detrimental impact on existing network operational performance.

The analysis has been carried out to provide a drainage strategy which has enabled us to recommend discharge of the following conditions.

Anglian Water Services has an obligation, under Section 98 of the Water Industry Act 1991, to provide a new sewer from the existing sewer network, upon receipt of a sewer requisition. Where it is identified that flows from the new sewer will cause detriment to the existing sewerage network AWS can recover a proportion of the reasonable costs incurred in providing mitigation by way of further sewerage works in consequence of the sewer requisition. Consequential sewers provided in this way are limited in the following ways:

- 1- They may only remove any additional operational risk to the sewerage network caused by the provision of the new sewer, and not more: in other words they can not provide betterment of said network.
- 2- They may not extend to sewerage works intended to rectify an existing deficit in the system. This is because they are provided purely in consequence of the requisitioned sewer.
- 3- It is only sewerage works that may be provided and not treatment facilities. This is because the Act only allows for the provision of a 'sewer' then the developer can not be held liable for costs associated with providing additional capacity at Water Recycling Centre (WRC).

The limit of this statutory obligation has been tested.

Alternatively, if no new sewer is required (and therefore no new requisition made), a developer may simply seek a connection to the existing sewerage network, thus avoiding the sewerage undertaker's ability to provide necessary consequential works at the developer's cost. In these cases, sewerage undertakers generally seek planning conditions to achieve the same effect as the requisition process. Accordingly, the planning conditions we request in respect of an acceptable sewer network are operated to no greater effect than the requisition process; in other words it is operated subject to the same limitations.

**For Manor Farm, North Fambridge (30 C3 dwellings)**

Analysis has confirmed that the connection of flows from this development has no significant impact on the performance of the foul water sewerage system, therefore the foul water drainage conditions in respect of this site can be discharged.

***Anglian Water recommends foul water conditions are discharged in full.***

**For Land West of The Avenue, North Fambridge (75 C3 dwellings).****Condition 13**

*"No development approved by this permission shall be commenced until a scheme for the improvement of the existing foul and surface water drainage system has been submitted to and approved in writing by the local planning authority. The scheme needs to set out the phasing of the development in terms of dwellings built and occupied alongside the foul and surface water system improvements needed. The scheme shall be implemented as approved. No occupation of dwellings approved by this permission shall occur until each phase of the scheme for improvement of the existing foul and surface water drainage system has been completed and confirmation obtained of available permitted capacity in the network and at the treatment works."*

As discussed above, it is not Anglian Water's practice to request the developer to fund improvements to the existing sewerage network beyond that required to address the development only. We have worked with the developer to ensure a drainage strategy has been produced which ensures that no detriment is caused to the existing operational performance by the flows from the proposed development.

BDW have provided Maldon District Council with a phasing strategy for the development. The phasing element of this condition has been met. The on-site and off-site drainage works will be undertaken in line and completed ahead of the first occupation.

Again, as discussed above, in relation to the Waste Water treatment, it is not Anglian Water's practice to seek to hold the developer liable through the planning system for the funding of any infrastructure upgrades to water recycling centres (WRC). Investment in WRC is triggered by a number of risks, including growth and regulatory changes and process deterioration. The growth element of the future risk is known, therefore we are satisfied that this element of the condition can be discharged as investment prioritisation has commenced.

***Anglian Water recommends discharge of condition 13***

**Condition 31 (relating to WRC capacity)**

*"No development shall commence until a detailed wastewater strategy has been submitted to and approved in writing by the local planning authority. The development shall be carried out in complete accordance with the approved details and retained as such thereafter."*

Again, it is not Anglian Water's practice to hold the developer liable through the planning system for the funding of any infrastructure upgrades to water recycling centres. Investment in WRC is triggered by a number of risks, including growth and regulatory changes and process deterioration. The growth element of the future risk is known, therefore we are satisfied that the condition can be discharged as Invest prioritisation has commenced

***Anglian Water recommends discharge of condition 31***

**Condition 33**

*"No development shall commence until a foul water strategy has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in complete accordance with the approved details and retained as such thereafter."*

The purpose of the foul water drainage strategy is to establish a method of connecting the development flows without creating additional detriment to the operation of the sewerage system. In response to a pre-planning enquiry AW undertook a desktop assessment that identified a network reinforcement solution in support of the outline planning application. Following their achieving outline planning approval Barratt David Wilson Homes (BDW) diligently approached AWS to carry out a detailed assessment of their proposed drainage strategy (including the new pumping station design) and of any potential detriment caused by their proposal. BDW entered into a S98 Underwriting Agreement with AWS that allowed this assessment to be completed to ensure that the required S98 works could be completed ahead of their first occupation.

This detailed analysis has provided an alternative, more reliable solution employing storage upstream of the connection point and discharge control on the development pumping station. This provides a more effective mitigation of the predicted- additional risk posed by the development. The agreed foul water strategy employs a control on the development pumping station to ensure that the development only discharges when there is sufficient capacity within the foul water network. The development onsite drainage has been designed to provide sufficient storage capacity to accommodate flows while the discharge is inhibited.

Under the terms of the S98 agreement the onsite elements of the work will be completed by BDW and the offsite works will be completed by AWS. BDW will install additional storage within the development drainage. The discharge control will be installed by AWS under the S98 sewer requisition scheme and delivery of this off-site work will be programmed to coincide with the onsite works to ensure that they are completed ahead of the first occupation.

The onsite infrastructure and pumping station has been submitted to Anglian Water for adoption, under a Section 104 agreement. Anglian Water will adopt this infrastructure and will therefore operate, control and maintain said infrastructure.

As the developer will provide the additional storage capacity to enable this strategy the foul water drainage conditions in respect of this site can be discharged.

***Anglian Water recommends discharge of condition 33***

**Conclusion**

The off-site control will be implemented in line with the developer's programme of on-site works and completed prior to occupation of any dwellings.

Anglian Water are therefore satisfied that the wastewater and foul drainage conditions associated with both manor Farm and land West of The Avenue can be discharged.



**REPORT of  
DIRECTOR OF PLANNING AND REGULATORY SERVICES**

**to**

**NORTH WESTERN AREA PLANNING COMMITTEE**

**6 AUGUST 2018**

<b>Application Number</b>	<b>DET/MAL/18/05080</b>
<b>Location</b>	Manor Farm The Avenue North Fambridge Essex
<b>Proposal</b>	Compliance with conditions application for application <b>OUT/MAL/14/01018</b> (Outline planning application for up to 30 dwellings) Condition 18. Investigation and Risk Assessment
<b>Applicant</b>	David Wilson Homes - BDW Eastern Counties
<b>Agent</b>	N/A
<b>Target Decision Date</b>	13.07.2018
<b>Case Officer</b>	Yee Cheung
<b>Parish</b>	<b>NORTH FAMBRIDGE</b>
<b>Reason for Referral to the Committee / Council</b>	The Discharge of Condition application is presented to Members of the North Western Ara Planning Committee at the discretion of the Director of Planning and Regulatory Services

**1. RECOMMENDATION**

The recommendation is to discharge Condition 18 as set out in Section 8 of the report.

**2. SITE MAP**

Please see overleaf.

**Manor Farm, The Avenue, North Fambridge**  
DET/MAL/18/05080



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Scale:	1:4,000
Organisation:	Maldon District Council
Department:	Department
Comments:	NW Committee 18/05080/DET
Date:	24/07/2018
MSA Number:	100018588

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Agenda Item no. 9

### 3. SUMMARY

#### 3.1 **Proposal / brief overview, including any relevant background information**

3.1.1 The application site comprises farm buildings which have been unused for a number of years as part of an agricultural holding and an area of grassland. Adjoining the site, but outside of the application area is the Manor Farm farmhouse which is to be retained in residential use. Adjoining the farmhouse also on The Avenue frontage is a brick built former stable block which is currently used for storage ancillary to the dwelling. The remaining buildings lie behind the road frontage and are clustered along the western boundary of the site. These are agricultural style buildings which are used for the storage of a variety of materials and machinery, including hay. There are also areas of concrete hardstanding. The total site area is 1.25 hectares.

3.1.2 The site lies to the south of The Avenue which is the main residential street in the southern part of North Fambridge. The Avenue is residential in character with detached dwellings set back from the road on large plots. To the west of the site are properties in Brabant Road which are also detached on large plots. These properties typically have rear gardens in the order of 40 metres and there is mature vegetation along the common boundary with the application site. The eastern boundary of the site comprises a mature hedgerow and the southern boundary is a low broken hedgerow.

3.1.3 In the approved Local Development Plan (LDP), the application site is within the defined settlement boundary of North Fambridge. To the south is the Crouch and Roach Estuaries Special Protection Area (SPA), Ramsar site and Site of Special Scientific Interest (SSSI). Blue House Farm which is a Local Nature Reserve run by the Essex Wildlife Trust lies to the east beyond Blue House Farm Chase. The application site lies in Flood Zone 1.

3.1.4 Outline planning permission with all matters reserved was granted in 2016 (**OUT/MAL/14/01018** dated 11 January 2016) for the proposal of up to 30 dwellings to be erected on this site. The outline planning application was granted subject to an Unilateral Undertaking Legal Agreement to a secure School Transport Contribution and 30% of affordable housing. It is important to note that the principle of development on this site has been established by virtue of outline planning application **OUT/MAL/14/01018** approved by the Council.

3.1.5 At the North Western Area Planning Committee on 14 May 2018, the Discharge of Conditions application **DET/MAL/17/05142** was presented to Members at the discretion of Director of Planning & Regulatory Services and Condition 18 was included amongst the conditions to be discharged. Condition 18 imposed on **OUT/MAL/14/01018** was considered by Members in relation to site investigation and risk assessment (reference: **DET/MAL/17/05142**). At the time, no details were provided in relation to any investigation and risk assessment of the site for the Council to be able to assess whether there were any contaminant on site. As such, the Council was unable to discharge Condition 18 imposed on outline planning application **OUT/MAL/14/01018** under the **DET/MAL/17/05142** application.

3.1.6 Due to reasons of consistency following the previous Discharge of Conditions application **DET/MAL/17/05142**, consultation with the Director of Planning &

Regulatory Services was held and it was agreed that the Discharge of Condition application **DET/MAL/18/05080** for Condition 18 at Manor Farm was to be presented to Members at the North Western Area Planning Committee.

### **3.2 Conclusion**

3.2.1 Based on the details submitted for the Discharge of Conditions application, the Council has considered that the following conditions can be discharged:-

<b>Conditions imposed on outline planning application OUT/MAL/14/01018</b>	<b>Discharged?</b>
18	Yes

## **4. MAIN RELEVANT POLICIES**

Members' attention is drawn to the list of background papers attached to the agenda.

### **4.1 National Planning Policy Framework 2018 including paragraphs:**

- 178 Contamination

### **4.2 Maldon District Local Development Plan 2014 – 2029 approved by the Secretary of State:**

- Policy S1 Sustainable Development
- Policy D1 Design Quality and Built Environment
- Policy D2 Climate Change & Environmental Impact of New Development

### **4.3 Relevant Planning Guidance / Documents:**

- National Planning Policy Guidance (NPPG)
- National Planning Policy Framework (NPPF)

## **5. MAIN CONSIDERATIONS**

### **5.1 Principle of Development**

5.1.1 Outline planning permission **OUT/MAL/14/01018** was approved on 11 January 2016 with all matters reserved for up to 30 dwellings. Accompanied with the outline planning permission was a signed and dated Section 106 legal agreement to provide contributions as listed in Section 3.1.4 of the officer report.

5.1.2 As part of the outline planning application approval **OUT/MAL/14/01018**, 30 planning conditions were imposed. Out of the 30 conditions, 16 conditions imposed on **OUT/MAL/14/01018** were pre-commencement planning conditions (Conditions: 4, 5, 6, 7, 8, 11, 12, 15, 16, 18, 19, 22, 25, 26, 27 and 29), however the Applicant is seeking to discharge 1 of the planning conditions imposed under this current **DET/MAL/18/05080** only (Condition: 18). It is important to note that Conditions 4, 5, 8, 25, 26, and 27 of **OUT/MAL/14/01018** were approved under

**DET/MAL/17/05142.** The outstanding conditions in relation to on-site Construction Management Plan (C.12); maintenance of the surface water drainage system (C.15); foul water strategy (C.16); and wastewater strategy (C.29) are being considered under DET/MAL/18/05092.

## 5.2 Condition 18 of OUT/MAL/14/01018

### 5.2.1 Condition 18 states:

*'Notwithstanding the details submitted with this application, no development shall commence until an investigation and risk assessment has been submitted to and Agenda Item no. 6 approved in writing by the Local Planning Authority. The risk assessment shall assess the nature and extent of any contamination on the site, whether or not it originates on the site. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The report of the findings must include: (i) a survey of extent, scale and nature of contamination; (ii) an assessment of the potential risks to:*

- *Human health,*
- *Property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, Adjoining land,*
- *Groundwaters and surface waters,*
- *Ecological systems*
- *Archaeological sites and ancient monuments;*
- *(iii) An appraisal of remedial options, and proposal of the preferred option(s).*

*This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. The development hereby permitted shall not commence until the measures set out in the approved report have been implemented.'*

### 5.2.2 To discharge Condition 18, the following documents were submitted to the Council for assessment:-

- Drawings: EB/J-B1226.02 (R01) Geo-Environmental Investigation Report dated October 2017
- Location Plan / Exploratory Hole Plan and Records (Appendix D) / J-B1226.02 Rev A dated Sept 2017
- Detailed Layout Plan: 746.202.04 dated 07.07.2017
- Appendix C Environmental Database Report
- Appendix B Historical Maps
- Appendix A Site Photographs

### 5.2.3 In a letter dated 3 May 2018 prepared by Opus Ltd, it states that the application site was the subject of a Geo-Environmental Investigation Report by Opus, referenced J-B1226.02 R01A and dated October 2017. Although three monitoring wells were installed during the previous investigation, the wells in WS3 and WS5 were both destroyed by the farmer and by archaeological works that were undertaken after the ground investigation. Ground gas and groundwater levels were therefore only

recorded in WS1 on four occasions in order to provide data for a preliminary ground gas assessment.

5.2.4 More robust assessment of the ground-gas conditions was undertaken including the replacement of lost / damaged wells with additional monitoring to fully satisfy planning condition 18.

#### 5.2.5 Additional Investigation

5.2.5.1 Four window sample boreholes (WS8-WS11) were advanced across the site on 10th April 2018. The sample boreholes were positioned in order to provide sufficient coverage of the site and to enable the construction of monitoring installations.

5.2.5.2 The approximate locations of the additional boreholes are shown on the appended Exploratory Hole Location Plan (Drawing No. J-B1226.00/G002 Revision A).

5.2.5.3 Combined ground gas and groundwater monitoring wells were installed in the four window sample boreholes WS8 to WS11. The wells were fitted with a gas tap assembly at ground level suitable for connection to proprietary gas monitoring equipment and a lockable cover at ground level to provide protection.

#### 5.2.6 Monitoring

5.2.6.1 Ground gas and groundwater monitoring has been undertaken in the four monitoring wells on three occasions in order to provide data for a ground gas assessment in accordance with the guidance set out in CIRIA665. The results have been included in this Discharge of Condition application dated 30 August 2017; 6 September 2017; 13 September 2017; 19 September 2017; 19 April 2018; 25 April 2018; and 2 May 2018 (Ground Gas Monitoring Results).

#### 5.2.7 Strata Observations

5.2.7.1 Topsoil was encountered at the surface in WS8 and WS9 advanced within the field areas towards the south and east of the site, generally comprising silty sandy slightly gravelly clay.

5.2.7.2 Made Ground was encountered at the surface in WS10 and WS11. Concrete was recorded at the surface in WS10 and WS11 and was underlain by firm greyish brown sandy clay with rare coarse brick gravel in WS10 and soft to firm clay with occasional broken brick and pockets of broken bricks in WS11.

5.2.7.3 Topsoil / Made Ground was underlain by firm orange/brown variably silty and gravelly clay with lenses of fine orange sand. The gravel encountered generally comprised fine to coarse, sub rounded flint and sandstone. This was underlain by firm to stiff brown mottled blueish grey silty clay with occasional pockets of limestone/sandstone gravel and lenses of fine orange sand.

5.2.7.4 Groundwater was struck locally in WS10 whilst all other investigation locations were dry.

## 5.2.8 Ground-Gas Monitoring Results

5.2.8.1 Gas monitoring results have been compared to guidance presented in CIRIA Report C665, Assessing Risks Posed by Hazardous Ground Gases to Buildings, 2007.

5.2.8.2 CIRIA Report C665 indicates that ground gas protection measures may be necessary in new buildings on sites where methane concentrations exceed a threshold value of 1% v/v and/or where carbon dioxide concentrations exceed a threshold value of 5% v/v. The gas flow rate is also considered in the required level of protection.

5.2.8.3 The results of the gas monitoring completed as part of this assessment are summarised as follows;

- Carbon dioxide recorded at concentrations of between <0.1% and 1.0% v/v.
- Carbon monoxide not recorded above the detection limit of the instrument.
- Hydrogen sulphide not recorded above the detection limit of the instrument.
- Methane not recorded above the detection limit of the instrument.
- Maximum flow rates of 0.1 l/hr.

## 5.2.9 Ground-Gas Risk Assessment

5.2.9.1 In assessing the risk from ground gases, consideration has been given to the history and environmental setting of the site and the ground conditions encountered. Taking into account the presence of albeit limited thicknesses of Made Ground and the absence of registered landfills in the area the gas risk is assessed to be very low for the proposed development.

5.2.9.2 The assessment is in accordance with CIRIA Report C665 to determine the required level of carbon dioxide protection measures for the proposed future site development. The submitted report recommended that further monitoring would not be considered necessary and ground gas protection measures would not be required for the proposed development.

## 5.2.10 Council's Environmental Health Services Response:-

5.2.10.1 The Environmental Health Services (EHS, 13 June 2018) has assessed the report from Opus Ltd dated 3 May 2018 and advised on the following:-

*'This describes an additional installation into ground gases at the site. Gas wells were reinstated after being destroyed as indicated in the previous report. The results of the gas monitoring indicate that the risk from ground gas is low and no remedial measures are required.'*

*'Whilst the borehole logs only indicate groundwater was found in WS10 the gas monitoring results in Appendix B indicate groundwater levels in all boreholes. There were no details of any analysis as EHS were expecting as the Ground Investigation Report states that the secondary aquifer is a receptor in the conceptual model'*

5.2.10.2 Therefore it was requested that results of the groundwater analysis and risk assessment monitoring or justification was submitted before EHS was able to comment further.

5.2.10.3 In response to the above comments by EHS, Opus Ltd submitted additional information to address the concerns raised in a letter correspondence dated 18 June 2018. The following information was submitted:-

Desk-based Information

*'The published geological information indicates that the site is underlain by Head Deposits (Secondary undifferentiated aquifer) and the London Clay Formation (Unproductive strata). Unproductive strata are defined as formations with low permeability that have negligible significance for water supply or river base flow, whereas Secondary undifferentiated aquifer indicates that the formation is highly variable and it is has not been possible to categorise as either Secondary Aquifer A or B with more detail. The site is not located within a groundwater Source Protection Zone nor are there any groundwater abstractions within 1km of the site. The nearest surface water feature (a drainage feature) is located 75m south-east of the site and there are no surface water abstractions within 1km of the site. It is therefore considered that the site is located within an area of very low sensitivity with respect to controlled waters'.*

*'The preliminary conceptual site model (Ref. Opus Report No. J-B1226.02 R01A dated March 2018) identified a low risk to controlled waters (Secondary undifferentiated aquifer) from on-site Made Ground, that potentially contained metals, PAH, TPH, phenol, via migration through permeable strata'.*

Ground Conditions

*Topsoil was encountered across the majority of the site.*

*Made Ground was encountered beneath the northern part of the site (covered with farm buildings). Visual and olfactory evidence of hydrocarbon impact was observed in TP1. No visual or olfactory evidence of contamination was observed at any other investigation location.*

*Topsoil/Made Ground was underlain by firm orange/brown variably silty and gravelly clay (also known as Head Deposits) overlying firm to stiff brown mottled blueish grey silty clay (also known as London Clay Formation).*

*Groundwater was encountered at one location only (WS10) during drilling/excavation.*

*Subsequent groundwater monitoring indicated standing water in the monitoring wells at relatively shallow depths. This is likely to be associated with surface water and not ground water.*

*No widespread or significant contamination was revealed by the laboratory geochemical testing undertaken on soil samples obtained during the site investigation works. There is no ongoing source of potential contamination associated with the site.*

*Further investigation has concluded that the site does not identify a significant source of contaminants or a viable pathway for the contamination to impact a controlled waters receptor and; therefore, there is no pollutant linkage. On the basis of the*

*above, the risks to controlled waters associated with the site are negligible and no further analysis or assessment of groundwater would be considered necessary.*

#### 5.2.11 Council's Environmental Health Services Response:-

5.2.11.1 The EHS (dated 25 June 2018) has re-assessed the additional information submitted by Opus Ltd dated 18 June 2018 and has advised that the additional information submitted stated that the secondary aquifer is unproductive and it is likely that that found in monitoring wells was from surface runoff. There is no other ongoing contamination source. From this information EHS is satisfied with the contractors risk assessment.

5.2.11.2 The original investigation report where total petroleum hydrocarbons were found above acceptable limits and asbestos, the report recommends further investigation after the demolition of structures by specialist contractors in order to fully assess the risks of the site and design subsequent remedial measures. EHS agrees with this approach.

### **5.3 Conclusion**

5.3.1 In this respect, the submitted details accord with Condition 18 of **OUT/MAL/14/01018** and is therefore recommended the condition to be discharged.

### **6. ANY RELEVANT SITE HISTORY**

- **FUL/MAL/02/00951** - Proposed erection of one detached dwelling house. Approved: 30.12.2002
- **11/00753/AGR** - Construction of farm track. Prior Approval Not Required: 13.09.2011
- **OUT/MAL/13/00473** - Outline planning application for up to 30 dwellings. Refused: 11 February 2014
- **OUT/MAL/14/01018** - Outline planning application for up to 30 dwellings. Approved: 11.01.2016
- **RES/MAL/17/00766** - Reserved matters application for the approval of access, appearance, landscaping, layout and scale on approved planning application OUT/MAL/14/01018 (Outline planning application for up to 30 dwellings). Refused: 04.04.2018
- **RES/MAL/18/00558** - Reserved matters application for the approval of access, appearance, landscaping, layout and scale on approved planning application OUT/MAL/14/01018 (Outline planning application for up to 30 dwellings). Approved: 17.07.2018

## 7. **CONSULTATIONS AND REPRESENTATIONS RECEIVED**

### 7.1 Representations received from Parish / Town Councils

Name of Parish / Town Council	Comment	Officer Response
N/A	N/A	N/A

### 7.2 Statutory Consultees and Other Organisations (*summarised*)

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
Archaeology	No comment to make on this application	Noted

### 7.3 Internal Consultees (*summarised*)

Name of Internal Consultee	Comment	Officer Response
Coast and Countryside Officer	No comment to make on this application	Noted

### 7.4 Representations received from Interested Parties (*summarised*)

#### 7.4.1 No letters of representation received.

## 8. **RECOMMENDATION**

That the following condition be **DISCHARGED**:

Conditions imposed on outline planning application OUT/MAL/14/01018	Discharged?
18	Yes



**REPORT of  
DIRECTOR OF PLANNING AND REGULATORY SERVICES**

**to  
NORTH WESTERN AREA PLANNING COMMITTEE  
6 AUGUST 2018**

<b>Application Number</b>	<b>DET/MAL/18/05092</b>
<b>Location</b>	Manor Farm The Avenue North Fambridge Essex
<b>Proposal</b>	Compliance with conditions notification OUT/MAL/14/01018 (Outline planning application for up to 30 dwellings) <b>Condition 12.</b> On-site construction management plan <b>Condition 15.</b> Responsibility of maintenance of surface water drainage system. <b>Condition 16.</b> Foul water strategy. <b>Condition 29.</b> Wastewater strategy
<b>Applicant</b>	David Wilson Homes - C/O Agent
<b>Agent</b>	N/A
<b>Target Decision Date</b>	14 August 2018
<b>Case Officer</b>	Yee Cheung
<b>Parish</b>	<b>NORTH FAMBRIDGE</b>
<b>Reason for Referral to the Committee / Council</b>	At the Director of Planning & Regulatory Services' discretion for consistency reasons

**1. RECOMMENDATION**

The recommendation is to discharge the following conditions as set out in Section 8 of the report.

**2. SITE MAP**

Please see overleaf.

**Manor Farm, The Avenue, North Fambridge**  
DET/MAL/18/05092



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Maldon District Council 100018588 2014



Scale: 1:4,000

Organisation: Maldon District Council

Department: Department

Comments: NW Committee 18/05092/DET

Date: 24/07/2018

MSA Number: 100018588

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### 3. SUMMARY

#### 3.1 **Proposal / brief overview, including any relevant background information**

3.1.1 The application site comprises farm buildings which have been unused for a number of years as part of an agricultural holding and an area of grassland. Adjoining the site, but outside of the application area is the Manor Farm farmhouse which is to be retained in residential use. Adjoining the farmhouse also on The Avenue frontage is a brick built former stable block which is currently used for storage ancillary to the dwelling. The remaining buildings lie behind the road frontage and are clustered along the western boundary of the site. These are agricultural style buildings which are used for the storage of a variety of materials and machinery, including hay. There are also areas of concrete hardstanding. The total site area is 1.25 hectares.

3.1.2 The site lies to the south of The Avenue which is the main residential street in the southern part of North Cambridgeshire. The Avenue is residential in character with detached dwellings set back from the road on large plots. To the west of the site are properties in Brabant Road which are also detached on large plots. These properties typically have rear gardens in the order of 40 metres and there is mature vegetation along the common boundary with the application site. The eastern boundary of the site comprises a mature hedgerow and the southern boundary is a low broken hedgerow.

3.1.3 In the approved Local Development Plan, the application site is within the defined settlement boundary of North Cambridgeshire. To the south is the Crouch and Roach Estuaries Special Protection Area (SPA), Ramsar site and Site of Special Scientific Interest (SSSI). Blue House Farm which is a Local Nature Reserve run by the Essex Wildlife Trust lies to the east beyond Blue House Farm Chase. The application site lies in Flood Zone 1.

3.1.4 Outline planning permission with all matters reserved was granted in 2016 (**OUT/MAL/14/01018** dated 11 January 2016) for the proposal of up to 30 dwellings to be erected on this site. The outline planning application was granted subject to an Unilateral Undertaking Legal Agreement to secure a School Transport Contribution and 30% of affordable housing. It is important to note that the principle of development on this site has been established by virtue of outline planning application **OUT/MAL/14/01018** approved by the Council.

3.1.5 At the North Western Area Planning Committee on 14 May 2018, the Discharge of Conditions application **DET/MAL/17/05142** was presented to Members at the discretion of Director of Planning & Regulatory Services and Conditions 12, 15, 16, and 29 were included amongst the conditions to be discharged. Conditions 12, 15, 16, and 29 imposed on **OUT/MAL/14/01018** were considered by Members at the meeting (reference: **DET/MAL/17/05142**). In terms of the Construction Management Plan, Members were concerned in relation to the access to the application site 'Manor Farm' via Crouch Road. With regard to the responsibility of maintenance of surface water drainage system (C.15), Foul water strategy (C.16), and Wastewater strategy (C.29), Members were not satisfied that the submitted details would resolve the current issues (surface / foul water system), and that it would not address the potential increase in waste disposal.

3.1.6 As such, the Council was unable to discharge Conditions 12, 15, 16, and 29 imposed on the outline planning application **OUT/MAL/14/01018** that was being considered under the **DET/MAL/17/05142** application.

3.1.7 Having considered the scale, nature and sensitivity of the site and more importantly for the reason of consistency following the previous Discharge of Conditions application **DET/MAL/17/05142**, consultation with the Director of Planning & Regulatory Services was held and it was agreed that the Discharge of Condition application **DET/MAL/18/05092** for Conditions 12, 15, 16, and 29 at Manor Farm was to be presented to Members at the North Western Area Planning Committee.

3.1.8 Additional clarification has been provided by Anglian Water in respect of this matter and it is therefore considered appropriate to fully re-assess the impact of the proposed development in terms of drainage.

### **3.2 Conclusion**

3.2.1 Based on the details submitted for the Discharge of Conditions application, the Council has considered that the following conditions can be discharged:-

<b>Conditions imposed on outline planning application OUT/MAL/14/01018</b>	<b>Discharged?</b>
12	No
15	Yes
16	Yes
29	Yes

## **4. MAIN RELEVANT POLICIES**

Members' attention is drawn to the list of background papers attached to the agenda.

**4.1 National Planning Policy Framework 2018 including paragraphs:**

- 7-8, 14, 17, 127, 165, 170 and 187

**4.2 Maldon District Local Development Plan approved by the Secretary of State on 21 July 2017**

- S1 – Sustainable Development.
- D1 – Design and Quality and Built Environment.
- D2 – Climate Change and Environmental Impact of New Development.
- D5 – Flood Risk and Coastal Management.

**4.3 Relevant Planning Guidance / Documents:**

- National Planning Policy Guidance (NPPG)
- National Planning Policy Framework (NPPF)

## 5. MAIN CONSIDERATIONS

### 5.1 Principle of Development

5.1.1 Outline planning permission **OUT/MAL/14/01018** was approved on 11 January 2016 with all matters reserved for up to 30 dwellings. Accompanied with the outline planning permission was a signed and dated Section 106 legal agreement to provide contributions as listed in Section 3.1.4 of the officer report.

5.1.2 As part of the outline planning application approval **OUT/MAL/14/01018**, 30 planning conditions were imposed. Out of the 30 conditions, 16 conditions imposed on **OUT/MAL/14/01018** were pre-commencement planning conditions (Conditions: 4, 5, 6, 7, 8, 11, 12, 15, 16, 18, 19, 22, 25, 26, 27 and 29), however the Applicant is seeking to discharge 4 of the planning conditions imposed under this current **DET/MAL/18/05092** only (Conditions: 12, 15, 16 and 29). These planning conditions are listed below and summarised in Section 3.2.1 of this report.

5.1.3 It is important to note that Conditions 4, 5, 8, 25, 26, and 27 of **OUT/MAL/14/01018** were approved under **DET/MAL/17/05142**. The other outstanding condition in relation to this site is Condition 18 relating to ‘Investigation and Risk Assessment’ is currently being considered under **DET/MAL/18/05080**.

### 5.2 Condition 12 of OUT/MAL/14/01018

5.2.1 Condition 12 states:

*‘No development shall commence until details have been submitted to and approved in writing by the Local Planning Authority of an on-site Construction Management Plan detailing:*

- *phasing of the development;*
- *times during which all construction activities will take place;*
- *measures to prevent the tracking out of mud and debris onto the highway;*
- *measures to manage noise and dust emissions during construction;*
- *details of parking areas for construction vehicles and construction workers vehicles;*
- *protective fencing to secure the site.*

*‘All approved measures shall be put in place prior to development commencing on site and all subsequent construction of the development shall be implemented in accordance with the approved details’*

5.2.2 For Condition 12, the Applicant has submitted an On-Site Construction Management - Revision D, which includes plans titled “Crouch Road Access Plan” and “Construction Management Layout Plan.”

5.2.3 The submitted Construction Management Layout Plan (Drawing No: BDW\_2A\_SP\_001 Revision D) shows the construction sequence for Area 1 (to the south of the site), Areas 2 and 3 to the east and west, and Area 4 (to the north). This construction sequence would begin from the south and gradually moving northwards keeping traffic movements to a minimum. A main site compound will be located on the Land West of Fambridge Road site (planning reference: **RES/MAL/17/00776** and

**DET/MAL/17/05154**) with satellite welfare being provided to the Manor Farm site. Within the Manor Farm site, there will be a satellite compound and a material storage area which will be located temporarily to the north east of site on the proposed public open space.

5.2.4 The previously submitted construction management plans indicated that construction traffic of all types would use Crouch Road to connect the Land West of Fambridge Road and Manor Farm sites. It was therefore a concern of the Council that vehicle movements and the movement of materials would detract from the amenities of the residents of Crouch Road. The amended details demonstrate that Crouch Road will be used as a pedestrian access route only and will be continue to be able to be used by residents for access. Fambridge Road and The Avenue will be the route used for construction traffic.

5.2.5 It is considered that this has addressed the previous concerns raised by the Council. In finding this acceptable, it should be noted that this does not convey any rights to utilise Crouch Road and if the permission of others is needed, this should be sought. If this is not subsequently provided and therefore Crouch Road is not able to be used, all movements would be likely to be required to use Fambridge Road and The Avenue, which would be acceptable, or the applicant would be required to re-discharge the condition.

5.2.6 In all other respects, the submitted Construction Management Plan is considered to be acceptable. The working hours stated are appropriate, there are measures proposed to prevent mud entering the highway, suitable measures proposed to control and limit noise and dust pollution and a proposal to provide security fencing which is considered satisfactory.

5.2.7 Based on the CMP submitted, it is considered that the details are satisfactory and Condition 12 of the outline planning application **OUT/MAL/14/01018** can therefore be discharged.

### **5.3 Condition 15 of OUT/MAL/14/01018**

5.3.1 Condition 15 states:

*'No development shall commence until details of who shall be responsible for the maintenance of the surface water drainage system in perpetuity, have been submitted to and approved in writing by the Local Planning Authority. The management of the surface water drainage system shall accord with the approved details thereafter'*

5.3.2 As part of the maintenance of the surface water drainage system, the Applicant has submitted the following information to the Council for consideration:-

- SuDS Management – Manor Farm
- 132915-R4 (0) Drainage Statement Site B
- 132915-R6 (00) SuDs Calculations Site B

5.3.3 In the SuDS Management – Manor Farm submitted by the Applicant it states that:-

### **Surface Water Strategy**

*‘As part of the planning permission for the development at Manor Farm, North Cambridgeshire a surface water drainage strategy is to be progressed based on sustainable drainage principles.’*

*‘The surface water drainage strategy is to be produced to cater for surface water run off generated up to and including the one in 100 year storm event.’*

*‘The surface water strategy consists of permeable paving to areas of hard standing which includes roads and driveways. Storm water runoff from dwellings will be drained via cellular soakaway tanks where infiltrations is feasible.’*

*‘A positive connection will be made to the existing surface water network with a flow control system in place to limit the peak flows.’*

*‘Any surface water that cannot exit the site in storm events will be attenuated on site via attenuation basins within the public open spaces.’*

### **Surface Water Management**

*‘Highway on site is not to be offered for adoption and will remain private. The roads are to be constructed using permeable paving which is to be maintained by a private management company once works have been completed and handed over. At this early stage of the project it cannot be confirmed who the management company will be.’*

*‘The main surface water piped network will be run within the private highway on site and be offered to Anglian Water for adoption under a Section 104. The drainage will be built to the standards required within Sewers for Adoption 6th Edition and will be run within as easement ensuing full access is maintained at all times for Anglian Water Services Ltd. All maintenance for these elements of the surface water system will be the responsibility of David Wilson Homes until such times as the network is adopted after which all maintenance obligations will transfer to Anglian Water.’*

*‘The subsequent infiltration tanks and attenuation basins within the public open space areas will be transferred to the private management company along with relevant maintenance obligations.’*

5.3.4 Essex County Council (Lead Local Flood Authority (LLFA)) has been consulted however no formal response has been received regarding to this current Discharge of Condition application. It is important to note that LLFA was consulted previously on Discharge of Condition application **DET/MAL/17/05142** and having assessed the submitted above documents which accompanied that planning application, LLFA had raised no objection in relation to the principle of the maintenance of the surface water drainage system. Having regard to the additional advice that has been received from Anglian Water and the advice that is expected to be provided at the committee meeting, it is expected that the advice of the statutory consultees will be able to be

afforded more weight and as such it is considered that there will be grounds to enable the discharge of the condition.

5.3.5 Condition 15 of outline planning application **OUT/MAL/14/01018** can therefore be discharged.

#### **5.4 Condition 16 of OUT/MAL/14/01018**

5.4.1 Condition 16 states:

*'No development shall commence until a foul water strategy has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in complete accordance with the approved details and retained as such thereafter'*

5.4.2 Condition 16 in relation to foul water strategy was recommended by Anglian Water Services (AWS) in the 2014 outline planning application. Condition 16 is caveated by Condition 17 which reads *'Pursuant to condition 16, no dwelling hereby approved, or approved as part of the reserved matters referred to in condition 1 of this permission, shall be occupied until the foul water strategy has been carried out in complete accordance with the approved details'*.

5.4.3 For Condition 16, the Applicant has submitted the following documents to the Council for consideration:-

- 302-5 P4 Site Drainage
- 132915-R4 (0) Drainage Statement Site B
- 132915-R6 (00) SuDs Calculations Site B

5.4.4 Based on the above documents submitted by the Applicant, AWS (**APPENDIX 1** dated 11 July 2018) has provided the following comment:-

*The purpose of the conditions that we request is to ensure that additional flows do not have a detrimental impact on existing network operational performance.*

*The analysis has been carried out to provide a drainage strategy which has enabled us to recommend discharge of the following conditions.*

*Anglian Water Services has an obligation, under Section 98 of the Water Industry Act 1991, to provide a new sewer from the existing sewer network, upon receipt of a sewer requisition. Where it is identified that flows from the new sewer will cause detriment to the existing sewerage network AWS can recover a proportion of the reasonable costs incurred in providing mitigation by way of further sewerage works in consequence of the sewer requisition. Consequential sewers provided in this way are limited in the following ways:*

- 1- *They may only remove any additional operational risk to the sewerage network caused by the provision of the new sewer, and not more: in other words they cannot provide betterment of said network.*

- 2- *They may not extend to sewerage works intended to rectify an existing deficit in the system.*  
*This is because they are provided purely in consequence of the requisitioned sewer.*
- 3- *It is only sewerage works that may be provided and not treatment facilities.*  
*This is because the Act only allows for the provision of a 'sewer' then the developer cannot be held liable for costs associated with providing additional capacity at Water Recycling Centre (WRC). The limit of this statutory obligation has been tested.*

*Alternatively, if no new sewer is required (and therefore no new requisition made), a developer may simply seek a connection to the existing sewerage network, thus avoiding the sewerage undertaker's ability to provide necessary consequential works at the developer's cost. In these cases, sewerage undertakers generally seek planning conditions to achieve the same effect as the requisition process. Accordingly, the planning conditions we request in respect of an acceptable sewer network are operated to no greater effect than the requisition process; in other words it is operated subject to the same limitations.*

- 5.4.5 AWS has carried out detailed modelling which has confirmed that the connection of flows from this development has no significant impact on the performance of the foul water sewerage system, therefore the foul water drainage conditions in respect of this site can be discharged.
- 5.4.6 It is concluded that AWS is satisfied that the strategy as submitted is effective in dealing with the proposed foul flows from the development. The strategy submitted has drawn on extensive modelling and analysis which has concluded that the development has no significant impact on the foul network performance. Therefore it is recommended that Condition 16 of outline planning application **OUT/MAL/14/01018** can be discharged in full.
- 5.4.7 The Environment Agency (EA) has assessed the information that has been submitted (Drainage Statement Site B prepared by RSK) which has not been amended since the previous application and covers both surface water and foul water drainage. In their consultation response dated 11 October 2017 (reference: AE/2017/122083/01-L01) EA note that paragraph 2.2 'Foul Drainage' makes reference to the Anglian Water Development Impact Assessment (DIA) carried out following the granting of outline permission. The DIA advises the impact could be mitigated by providing storage capacity on site at the nearby Avenue Pumping Station. Paragraph 3.1 'Mitigation Works' goes on to describe in more detail the proposed arrangements for dealing with foul water from this development site. In the light of the findings of the DIA and the proposed mitigation works, which would appear to provide an operational solution, the EA has advised within their letter dated 06 February 2018 (included at **APPENDIX 2**) that the aspect of condition 16 that requires discharge prior to the commencement of development can be discharged.

## 5.5 Condition 29 of OUT/MAL/14/01018

### 5.5.1 Condition 29 states:

*'No development shall commence until a detailed wastewater strategy has been submitted to and approved in writing by the local planning authority. The development shall be carried out in complete accordance with the approved details and retained as such thereafter'*

5.5.2 Condition 29 in relation to wastewater strategy was recommended by Anglian Water Services (AWS) in the 2014 outline planning application. Condition 29 is caveated by Condition 30 which reads *'pursuant to condition 29 above, no dwelling hereby approved, or approved as part of the reserved matters referred to in condition 1 of this permission, shall be occupied until the wastewater strategy has been carried out in complete accordance with the approved details'*.

5.5.3 For Condition 29, the Applicant has submitted the following documents to the Council for consideration:-

- 132915-R4 (0) – Drainage Statement Site B
- 302-5 P4 Site Drainage

5.5.4 Based on the above document submitted, it has been concluded by the Applicant that the Drainage Statement has demonstrated that a robust foul drainage impact mitigation strategy has been agreed with the Anglian Water, which is the drainage authority responsible for the conveyance and treatment of wastewater flows. This strategy will include off-site storage and a real time control system to ensure that there will be no increase in foul sewer flood risk due to the development.

5.5.5 The Applicant acknowledges that the mitigation scheme must be implemented before any new properties are occupied. In addition, a sustainable surface water drainage strategy has been agreed in principle with the Lead Local Flood Authority (LLFA, Essex County Council) and the Environment Agency. This drainage strategy will reduce the pre-development risk of flooding to the roads and downstream properties by restricting the post-development discharge to the average annual flow rate and by removing the blockage from the existing culver.

5.5.6 The Environment Agency has noted that this wastewater strategy condition was recommended by Anglian Water Services and therefore expects this to take into account the permitted capacity position at Latchingdon treatment works. As stated above Condition 29 is caveated by Condition 30 which requires physical works to have been carried out and being operational prior to the dwellings being occupied.

5.5.7 Anglian Water Services (AWS) has assessed the information submitted by the Applicant. In their response dated 11 July 2018 (**APPENDIX 1**), AWS is aware of the concerns from both residents and the Parish Council regarding localised flooding and impact of new development on Latchingdon Water Recycling Centre (WRC).

5.5.8 The public sewerage network serving North Fambridge is intended for the drainage of domestic foul water only, for which it does have sufficient capacity. The existing flood risk involving the public foul water sewerage and the potential dry-weather flow exceedance at Latchingdon WRC are related to surface water flows entering the foul

sewerage network at many points via direct connections, overland flows and infiltration.

- 5.5.9 AWS has previously worked with the Environment Agency and Essex County Council in their role as both lead local flood and highways authority, is continuing to identify potential measures to address the lack of effective surface water drainage infrastructure in North Fambridge.
- 5.5.10 It is important to note that Section 98 of The Water Industry Act 1991 states that AWS cannot require a developer to provide betterment of the existing network, nor can we require them to provide WRC upgrades. Any infrastructure improvements at Latchingdon WRC will be planned and provided by Anglian Water, and will work with the Environment Agency to ensure investment planning happens at the appropriate time.
- 5.5.11 Based on the information submitted, it is concluded that AWS is satisfied that the strategy as submitted is effective in dealing with the proposed foul flows from the development. AWS will plan and invest accordingly in WRC and it is not for the developer to make provision for this. Therefore AWS recommends the discharge of Condition 29 imposed on outline planning application **OUT/MAL/14/01018** in full.

## **6. ANY RELEVANT SITE HISTORY**

- **FUL/MAL/02/00951** - Proposed erection of one detached dwelling house. Approved: 30.12.2002
- **11/00753/AGR** - Construction of farm track. Prior Approval Not Required: 13.09.2011
- **OUT/MAL/13/00473** - Outline planning application for up to 30 dwellings. Refused: 11 February 2014
- **OUT/MAL/14/01018** - Outline planning application for up to 30 dwellings. Approved: 11.01.2016
- **RES/MAL/17/00766** - Reserved matters application for the approval of access, appearance, landscaping, layout and scale on approved planning application
- **OUT/MAL/14/01018** (Outline planning application for up to 30 dwellings). Refused: 04.04.2018
- **RES/MAL/18/00558** - Reserved matters application for the approval of access, appearance, landscaping, layout and scale on approved planning application OUT/MAL/14/01018 (Outline planning application for up to 30 dwellings). Approved: 17.07.2018

## 7. CONSULTATIONS AND REPRESENTATIONS RECEIVED

### 7.1 Representations received from Parish / Town Councils

Name of Parish / Town Council	Comment	Officer Response
North Farnham Parish Council	<ul style="list-style-type: none"> <li>Concerns regarding the sewerage and surface water.</li> <li>Same set of documents are being resubmitted with this application with very little new information from the developer.</li> <li>Crouch Road is a private road and is not in the ownership of the developers. Does not address concerns raised by existing residential properties adjacent to the site</li> </ul>	Noted in the officer report

### 7.2 Statutory Consultees and Other Organisations

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
ECC Highway Authority	See previous comment under <b>DET/MAL/17/05142</b> dated 10 October 2017	Noted. In the email correspondence dated 10 October 2017, Highway commented that no objection to the proposal.
ECC Sustainable Drainage Systems (SUDs) (LLFA)	No response received at the time of writing this report. Any comments received will be reported on the Members Update.	The LLFA was consulted previously on Discharge of Condition application <b>DET/MAL/17/05142</b> and having assessed the submitted above documents which accompanied that planning application, LLFA had raised no objection in relation to the principle of the maintenance of the surface water drainage system. The submissions are no different and therefore weight can be afforded to the original response.

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
Environment Agency	No response received to this application at the time of writing this report.	It is noted that the Environment Agency previously recommended the discharge of conditions 16 and 29 and as there have been no changes to the submissions of the applicant, it is expected that the same conclusion will be reached.
Anglian Water Services	It is recommended that conditions 16 and 29 are discharged.	Noted in the report

### 7.3 Internal Consultees

Name of Internal Consultee	Comment	Officer Response
Environmental Health Services (EHS)	EHS have advised that they would like reassurance that no resident will be adversely affected by the additional retention storage to be provided at Avenue Road pumping station.	This comment is not relevant to this site.

### 7.4 Representations received from Interested Parties

7.4.1 No letters received for this Discharge of Condition application.

## 8. RECOMMENDATION

That the following conditions be **DISCHARGED**:

Conditions	Discharged
12	Yes
15	Yes
16	Yes
29	Yes

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Head of Planning Services  
Maldon District Council

Sent by email

11 July 2018

**Anglian Water Services Ltd**  
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PE3 6WT  
  
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### **18/05092/DET – Manor Farm**

Thank you for consulting Anglian Water in relation to the above planning application. Our response is in relation to condition 16 – Foul Water Strategy and 29 Wastewater Strategy. This letter is submitted with our full representation in relation to the above conditions. All our previous comments are still valid.

#### **Background**

Anglian Water have been working closely with Barrett David Wilson Homes regarding the site West of Fambridge Road since 2017. Drainage infrastructure improvements have been identified to serve the development site in full. Anglian Water has undertaken detailed modelling work to ensure a mitigation solution has been identified that would be effective in dealing with the proposed flows from the development.

Throughout the planning process Anglian Water has engaged with Maldon District Council and the Environment Agency. A number of additional supporting statements and briefing notes have been provided by Anglian Water, these additional documents provide further details regarding the strategy. All previous correspondence in relation to Land West of Fambridge Road remains valid.

#### **Existing issues in North Fambridge**

Anglian Water are aware of the concerns from both residents and the Parish Council regarding localised flooding and impact of new development on Latchingdon Water Recycling Centre (WRC).

The public sewerage network serving North Fambridge is intended for the drainage of domestic foul water only, for which it does have sufficient capacity. The existing flood risk involving the public foul water sewerage and the potential dry-weather flow exceedance at Latchingdon WRC are related to surface water flows entering the foul sewerage network at many points via direct connections, overland flows and infiltration.

Surface water flows should not be discharged into this foul sewerage network, the network does not have the capacity to convey surface water. It would be inappropriate to seek to accommodate this flow within the foul network. In cases such as this a multi-agency approach is required to understand the full extent of the issues and define possible solutions.

Anglian Water has previously worked with the Environment Agency and Essex County Council in their role as both lead local flood and highways authority, in trying to identify potential measures to address the lack of effective surface water drainage infrastructure in North Fambridge. Anglian Water are now re-starting this partnership working and are offering the technical lead with a wider multi-agency approach for the issues in North Fambridge.

### **Water Industry Act**

The Water Industry Act 1991, section 98 states that we cannot require a developer to provide betterment of the existing network, nor can we require them to provide WRC upgrades. Any infrastructure improvements at Latchingdon WRC will be planned and provided by Anglian Water, we will work with the Environment Agency to ensure investment planning happens at the appropriate time.

### **Conclusion**

In conclusion Anglian Water is satisfied that the strategy as submitted is effective in dealing with the proposed foul flows from the development.

Condition 16 – the strategy submitted has drawn on extensive modelling and analysis which has concluded that the development has no significant impact on the foul network performance. Anglian Water recommends discharge of condition 16 in full.

Condition 29 – Anglian Water will plan and invest accordingly in water recycling centres, it is not for the developer to make provision for this. Anglian Water recommends discharge of condition 29 in full.

If you wish to discuss any aspect of this response please do not hesitate to contact me.

Kind regards  
Regards



Iain Amis  
Head of Development Services



**North Fambridge  
Manor Farm and Land West of the Avenue**

Anglian Water Services Ltd.

July 2018

**Preface**

The purpose of the conditions that we request is to ensure that additional flows do not have a detrimental impact on existing network operational performance.

The analysis has been carried out to provide a drainage strategy which has enabled us to recommend discharge of the following conditions.

Anglian Water Services has an obligation, under Section 98 of the Water Industry Act 1991, to provide a new sewer from the existing sewer network, upon receipt of a sewer requisition. Where it is identified that flows from the new sewer will cause detriment to the existing sewerage network AWS can recover a proportion of the reasonable costs incurred in providing mitigation by way of further sewerage works in consequence of the sewer requisition. Consequential sewers provided in this way are limited in the following ways:

- 1- They may only remove any additional operational risk to the sewerage network caused by the provision of the new sewer, and not more: in other words they can not provide betterment of said network.
- 2- They may not extend to sewerage works intended to rectify an existing deficit in the system. This is because they are provided purely in consequence of the requisitioned sewer.
- 3- It is only sewerage works that may be provided and not treatment facilities. This is because the Act only allows for the provision of a 'sewer' then the developer can not be held liable for costs associated with providing additional capacity at Water Recycling Centre (WRC).

The limit of this statutory obligation has been tested.

Alternatively, if no new sewer is required (and therefore no new requisition made), a developer may simply seek a connection to the existing sewerage network, thus avoiding the sewerage undertaker's ability to provide necessary consequential works at the developer's cost. In these cases, sewerage undertakers generally seek planning conditions to achieve the same effect as the requisition process. Accordingly, the planning conditions we request in respect of an acceptable sewer network are operated to no greater effect than the requisition process; in other words it is operated subject to the same limitations.

**For Manor Farm, North Fambridge (30 C3 dwellings)**

Anglian Water carried out detailed modelling which has confirmed that the connection of flows from this development has no significant impact on the performance of the foul water sewerage system, therefore the foul water drainage conditions in respect of this site can be discharged.

*Anglian Water recommends foul water conditions are discharged in full.*

**For Land West of The Avenue, North Fambridge (75 C3 dwellings).****Condition 13**

*"No development approved by this permission shall be commenced until a scheme for the improvement of the existing foul and surface water drainage system has been submitted to and approved in writing by the local planning authority. The scheme needs to set out the phasing of the development in terms of dwellings built and occupied alongside the foul and surface water system improvements needed. The scheme shall be implemented as approved. No occupation of dwellings approved by this permission shall occur until each phase of the scheme for improvement of the existing foul and surface water drainage system has been completed and confirmation obtained of available permitted capacity in the network and at the treatment works."*

As discussed above, it is not within Anglian Water's power to request the developer to fund improvements to the existing sewerage network beyond that required to address the development only. We have worked with the developer to ensure a drainage strategy has been produced which ensures that no detriment is caused to the existing operational performance by the flows from the proposed development.

BDW have provided Maldon District Council with a phasing strategy for the development. The phasing element of this condition has been met. The on-site and off-site drainage works will be undertaken in line and completed ahead of the first occupation.

Again, as discussed above, in relation to the Waste Water treatment, it is not within Anglian Water's power to seek to hold the developer liable through the planning system for the funding of any infrastructure upgrades to water recycling centres (WRC). Investment in WRC is triggered by a number of risks, including growth and regulatory changes and process deterioration. The growth element of the future risk is known, therefore we are satisfied that this element of the condition can be discharged as investment prioritisation has commenced.

*Anglian Water recommends discharge of condition 13*

**Condition 31 (relating to WRC capacity)**

*"No development shall commence until a detailed wastewater strategy has been submitted to and approved in writing by the local planning authority. The development shall be carried out in complete accordance with the approved details and retained as such thereafter."*

Again, it is not within Anglian Water's power to hold the developer liable through the planning system for the funding of any infrastructure upgrades to water recycling centres. Investment in WRC is triggered by a number of risks, including growth and regulatory changes and process deterioration. The growth element of the future risk is known, therefore we are satisfied that the condition can be discharged as Invest prioritisation has commenced

***Anglian Water recommends discharge of condition 31***

**Condition 33**

*"No development shall commence until a foul water strategy has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in complete accordance with the approved details and retained as such thereafter."*

The purpose of the foul water drainage strategy is to establish a method of connecting the development flows without creating additional detriment to the operation of the sewerage system. In response to a pre-planning enquiry AW undertook a desktop assessment that identified a network reinforcement solution in support of the outline planning application. Following their achieving outline planning approval Barratt David Wilson Homes (BDW) diligently approached AWS to carry out a detailed assessment of their proposed drainage strategy (including the new pumping station design) and of any potential detriment caused by their proposal. BDW entered into a S98 Underwriting Agreement with AWS that allowed this assessment to be completed to ensure that the required S98 works could be completed ahead of their first occupation.

This detailed analysis has provided an alternative, more reliable solution employing storage upstream of the connection point and discharge control on the development pumping station. This provides a more effective mitigation of the predicted- additional risk posed by the development. The agreed foul water strategy employs a control on the development pumping station to ensure that the development only discharges when there is sufficient capacity within the foul water network. The development onsite drainage has been designed to provide sufficient storage capacity to accommodate flows while the discharge is inhibited.

Under the terms of the S98 agreement the onsite elements of the work will be completed by BDW and the offsite works will be completed by AWS. BDW will install additional storage within the development drainage. The discharge control will be installed by AWS under the S98 sewer requisition scheme and delivery of this off-site work will be programmed to coincide with the onsite works to ensure that they are completed ahead of the first occupation.

The onsite infrastructure and pumping station has been submitted to Anglian Water for adoption, under a Section 104 agreement. Anglian Water will adopt this infrastructure and will therefore operate, control and maintain said infrastructure.

As the developer will provide the additional storage capacity to enable this strategy the foul water drainage conditions in respect of this site can be discharged.

***Anglian Water recommends discharge of condition 33***

**Conclusion**

The off-site control will be implemented in line with the developer's programme of on-site works and completed prior to occupation of any dwellings.

Anglian Water are therefore satisfied that the wastewater and foul drainage conditions associated with both manor Farm and land West of The Avenue can be discharged.

Maldon District Council  
 Planning Department  
 Princes Road  
 Maldon  
 Essex  
 CM9 5DL

**Our ref:** AE/2017/122083/03-L01  
**Your ref:** DET/MAL/17/05142  
**Date:** 06 February 2018

Dear Sir/Madam

**COMPLIANCE WITH CONDITIONS NOTIFICATION OUT/MAL/14/01018 (OUTLINE PLANNING APPLICATION FOR UP TO 30 DWELLINGS) CONDITION 4 - SAMPLES OF EXTERNAL SURFACES. CONDITION 5 - ARCHAEOLOGICAL ASSESSMENT. CONDITION 8 - FINISHED GROUND AND FINISHED FLOOR LEVELS. CONDITION 11 - LIGHTING STRATEGY. CONDITION 12 - ON-SITE CONSTRUCTION MANAGEMENT PLAN. CONDITION 15 - RESPONSIBILITY OF MAINTENANCE OF SURFACE WATER DRAINAGE SYSTEM. CONDITION 16 - FOUL WATER STRATEGY. CONDITION 18 - INVESTIGATION AND RISK ASSESSMENT. CONDITION 25 - REMOVAL OF TREES & HEDGEROWS. CONDITION 26 - SITING, HEIGHT, DESIGN AND MATERIALS OF THE TREATMENT OF ALL BOUNDARIES INCLUDING GATES, FENCES, WALLS, RAILINGS AND PIERS. CONDITION 27 - ECOLOGICAL MITIGATION MEASURES. CONDITION 29 - WASTEWATER STRATEGY. MANOR FARM THE AVENUE, NORTH FAMBRIDGE, CHELMSFORD, CM3 6LZ.**

Following our earlier letter dated 12 January 2018 – this set out a number of issues we wished to have clarification on from Anglian Water Services (AWS) - we subsequently met with representatives of Anglian Water Services (AWS) and Barratt David Wilson Homes (BDWH) in order to discuss the issues raised by us in that letter. The points detailed below were the subject of discussions during our meeting and we agreed in principle with the conclusions reached on each point.

1. Confirmation that the mitigation solution approved for the development connection is intended to address the impact on the sewerage network. It will not affect the predicted exceedence of the Dry Weather Flow (DWF) permit at Latchingdon Water Recycling Centre (WRC).
2. The mitigation solution is designed to ensure that flows from the development will not discharge to the network during periods of high surcharge and will not therefore, create additional detriment.

3. Due to the regulatory constraints to funding sewer requisition schemes (Section 98 of the Water Industry Act 1991), mitigation solutions that are designed to enable new development connections are not intended to resolve pre-existing network performance issues. However, the provision of active control and upstream attenuation for this development will offer the potential for closer integration with the existing sewage pumping stations and this in turn will provide more operational flexibility in managing the prevailing network performance risks. Furthermore, the installation of the network monitor that is integral to mitigation solution, will provide additional permanent data collection on the network performance. This provides greater verification of modelled simulations and diagnostic evidence in support of further capital investment.
4. AWS acknowledge that assumptions on the impact on water quality relating to the final effluent discharge from Latchingdon WRC cannot be relied upon with a prevailing DWF permit exceedence. Ultimately, the sanitary consent standard set for the FE discharge will need to be reviewed prior to determining a revised discharge consent that reflects the extent of new development expected in the catchment. However, the degree of the water quality impact of this development cannot be determined at this stage nor can we be certain on the amount of catchment growth on which to assess future water quality impact and so define what physical modifications to the WRC are needed. Determining this will require a period of analysis and investment planning far exceeding the practicable programming for the development.
5. The purpose of the AWS original condition relating to sewage treatment capacity was to ensure that the developer provided sufficient information on the service requirement date to enable AWS to commence investment planning. It is considered that this requirement has been satisfied and the projected exceedence of the DWF permit at Latchingdon has been identified in the investment planning for AMP7 (2020-25). It should be noted that the AWS investment plan will be subject to approval by Ofwat and the appropriate governance to ensure the whole life value (TOTEX) justifies the investment, so we cannot be more specific on the WRC investment at this stage.
6. The necessary lead-in time for investment to enhance WRC capacity and also the general uncertainty around future catchment growth, inevitably creates a time lag between the occupation of early elements of the planned new development and the provision of the required WRC enhancement. The water quality impacts that may occur during this period will be managed by AWS through the normal engagement with Environment Agency compliance teams.

We were given to understand during the meeting that AWS have held discussions with BDWH concerning detailed design for the foul water disposal requirements and we are happy this aspect is being progressed by the two parties. We are now able to recommend the part discharge of condition 16. However, this should not be taken as implying that the volumetric or quality parts of the discharge consent for Latchingdon WRC can be exceeded. We would expect AWS to continue to carry out their obligations – they are of course aware of these - as regards effluent and flow compliance such that a breach does not occur.

Yours faithfully



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cc Strutt & Parker Ltd

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