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DIRECTOR OF STRATEGY,  
PERFORMANCE AND  
GOVERNANCE'S OFFICE  
DIRECTOR OF STRATEGY,  
PERFORMANCE AND GOVERNANCE  
Paul Dodson

17 November 2020

Dear Councillor

You are summoned to attend the meeting of the;

## **SOUTH EASTERN AREA PLANNING COMMITTEE**

on **WEDNESDAY 25 NOVEMBER 2020 at 6.00 pm.**

Please note that this will be a **remote meeting** – Members to access the meeting via Microsoft Teams. Members of the press and public may listen to the live stream via the [Council's YouTube channel](#).

A copy of the agenda is attached.

Yours faithfully



Director of Strategy, Performance and Governance

### COMMITTEE MEMBERSHIP

#### CHAIRMAN

Councillor N J Skeens

#### VICE-CHAIRMAN

Councillor V J Bell

#### COUNCILLORS

M G Bassenger  
B S Beale MBE  
R G Boyce MBE  
Mrs P A Channer, CC  
R P F Dewick  
M W Helm  
A L Hull  
W Stamp

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are available via the Council's website [www.maldon.gov.uk](http://www.maldon.gov.uk).

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**AGENDA  
SOUTH EASTERN AREA PLANNING  
COMMITTEE**

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**WEDNESDAY 25 NOVEMBER 2020**

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

2. **Apologies for Absence**

3. **Minutes of the last meeting** (Pages 7 - 12)

To confirm the Minutes of the meeting of the Committee held on 28 October 2020, (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. **20/00648/MLA - Land between Chandlers and Creeksea Lane, Maldon Road, Burnham-on-Crouch** (Pages 13 - 22)

To consider the report of the Director of Service Delivery (copy enclosed, Members' Update to be circulated)\*.

6. **9/20 TPO - Bass Wood (land to the north and east of The Boathouse, Bridgemarsh Lane, Althorne)** (Pages 23 - 30)

To consider the report of the Director of Service Delivery (copy enclosed, Members' Update to be circulated)\*.

7. **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 Council decision (Minute No. 542 refers), the following report is for noting and is available 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 participation. This will operate only in relation to the consideration and determination of planning applications under Agenda Item No. 5.
2. The Committee may consider representation from one objector, one supporter, a Parish / Town Council representative, and the applicant / agent. Please note that the opportunity to participate is afforded only to those having previously made written representation.
3. Anyone wishing to participate must register by completing the online form (link below) no later than noon on the working day before the Committee meeting [www.maldon.gov.uk/publicparticipation](http://www.maldon.gov.uk/publicparticipation). The first person to register in each category will be sent a Microsoft Teams invitation which will allow them to join the 'live' meeting to make their statement.
4. For further information please 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 and publishing on the Council's website any part of this meeting held in open session. At the start of the meeting an announcement will be made about the recording.

## **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)

### **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
- 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 (as amended)
- The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended)
- Growth and Infrastructure Act 2013
- Housing and Planning Act 2016
- Neighbourhood Planning Act 2017
- The Town and Country Planning (Brownfield Land Register) Regulations 2017

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

### **i) Government policy and guidance**

- National Planning Policy Framework (NPPF) - 2018
- Planning Practice Guidance (PPG)
- Planning policy for Traveller sites - 2015
- Relevant government circulars
- Relevant Ministerial Statements (as referred to in the report)
- Essex and South Suffolk Shoreline Management Plan – October 2010

### **ii) Essex County Council**

- Essex Design Guide 1997 (Note: superseded by Maldon District Design Guide 2018)
- Essex and Southend on Sea Waste Local Plan 2017
- Essex Minerals Local Plan 2014

### **iii) Maldon District Council**

- Five Year Housing Land Supply Statement 2017 / 18
- Maldon District Design Guide – 2017
- Maldon and Heybridge Central Area Masterplan - 2017
- 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 (adapted as Supplementary Planning Document (SPD) 2018)
- Vehicle Parking Standards SPD - 2018
- Renewable and Low Carbon Technologies SPD – 2018
- Maldon District Specialist Housing SPD – 2018
- Affordable Housing and Viability SPD – 2018
- 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 SPD - 2010
- Heybridge Basin Village Design Statement – 2007
- Wickham Bishops Village Design Statement – 2011
- Woodham Walter Village Design Statement – 2011
- Althorne Village Design Statement
- Woodham Walter Village Design Statement
- Various Conservation Area Appraisals

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



**MINUTES of  
SOUTH EASTERN AREA PLANNING COMMITTEE  
28 OCTOBER 2020**

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**PRESENT**

Chairman	Councillor
Vice-Chairman	Councillor
Councillors	M G Bassenger, B S Beale MBE, V J Bell, R G Boyce MBE, Mrs P A Channer, CC and A L Hull
In Attendance	Councillors E L Bamford, C Mayes and C Morris

**1. CHAIRMAN'S NOTICES**

The Chairman welcomed everyone to the remote meeting, held under new regulations which came into effect on 4 April 2020 in response to the COVID-19 pandemic. He took Members through some general housekeeping issues, together with the etiquette for the meeting and then asked Officers present to introduce themselves.

This was followed by a roll call of all Members present.

**2. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors R P F Dewick, N Skeens and W Stamp.

**3. MINUTES OF THE LAST MEETING**

**RESOLVED** that the Minutes of the meeting of the Committee held on 30 September 2020 be approved and confirmed.

**4. DISCLOSURE OF INTEREST**

Councillor Mrs P A Channer, CC, disclosed a non-pecuniary interest in all items on the agenda as a member of Essex County Council, a consultee on highways, access, waste, education and all planning related matters.

It was noted that all Members had a non-pecuniary interest in Agenda Item 5 20/00733/FUL – Land Adjacent Orchard House, Nipsells Chase, Mayland as they knew the applicant, Mrs Kenny Paton.

5. **20/00733/FUL - LAND ADJACENT ORCHARD HOUSE, NIPSELLS CHASE, MAYLAND**

<b>Application Number</b>	<b>20/00733/FUL</b>
<b>Location</b>	Land Adjacent Orchard House, Nipsells Chase, Mayland
<b>Proposal</b>	An equestrian arena to ride in the wet winter months. The arena is to be made of an equestrian sand mix.
<b>Applicant</b>	Mr & Mrs Kenny Paton
<b>Agent</b>	N/A
<b>Target Decision Date</b>	24.11.2020
<b>Case Officer</b>	Louise Staplehurst
<b>Parish</b>	<b>MAYLAND</b>
<b>Reason for Referral to the Committee / Council</b>	Councillor Miss S White is co-applicant. Major application on site area

A Members' Update had been circulated prior to the meeting that provided further information on the design of the equestrian arena, representations from internal consultees, an amended condition 4 together with an amended informative.

Following the Officer's presentation, Mr Kenny Paton, the Applicant addressed the Committee. The Chairman then moved the Officer's recommendation that planning application 20/00733/FUL – Land adjacent Orchard House, Nipsells Chase, Mayland be approved subject to conditions as detailed in section 8 of the report. This was seconded by Councillor Mrs P A Channer, CC.

Councillor Channer then asked for reassurance that the drainage concerns raised by Mayland Parish Council had been addressed in the report and all drainage works would be completed. The Specialist: Development Management advised that a surface water drainage report had been submitted. In addition, Environmental Health had been consulted and were satisfied that all drainage was sufficient and there was a condition to ensure the work was carried out in accordance with those details.

There being no further discussion the Chairman put the Officer's recommendation of approval to the Committee and upon a vote being taken the application was approved.

**RESOLVED** that the application be **APPROVED** subject to amendments to condition 4 and the informative as per the Members' Update, together with the following 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) of The Town & Country Planning Act 1990 (as amended).
2. The development hereby permitted shall be carried out in complete accordance with approved drawings: 1142/01 Rev A, Arena Site Plan, Arena Plan, Surface Water Drainage Strategy, Ecology Report  
REASON To ensure the development is carried out in accordance with the details as approved.
3. The development hereby approved shall be carried out in accordance with the details specified in the application form/information provided.  
REASON To ensure the external appearance of the development is appropriate to the locality in accordance with policy D1 of the approved Maldon District Local



Development Plan and the guidance contained in the Maldon District Design Guide SPD.

4. The boundary treatments surrounding the equestrian arena shall consist of a 1.6 metre high timber post and rail fence, as set out within the email referenced 'boundary treatment details' dated 26.10.2020 and as shown in the details submitted in the 'boundary treatment photo example'.

REASON To ensure the appearance of the boundary treatments are appropriate to the locality in accordance with policy D1 of the approved Maldon District Local Development Plan and the guidance contained in the Maldon District Design Guide SPD.

5. The development shall be carried out in accordance with the surface water drainage scheme, 'Surface Water Drainage Strategy' undertaken by Ambiental Environmental Assessment (reference: 5407 SWDS) and shall be retained as such thereafter.

REASON To avoid the risk of water flooding and pollution in accordance with policy D2 of the Maldon Local Development Plan (2017).

6. No floodlighting or other external form of illumination of the site shall be undertaken without the prior written approval of the local planning authority. Prior to the use of the development hereby permitted, details of any proposed floodlighting and all other external illumination of the site shall be submitted to and approved in writing by the local planning authority. All illumination within the site shall be retained in accordance with the approved details. There shall be no other lighting of the external areas of the site unless otherwise agreed in writing by the local planning authority.

REASON To protect residential amenity in compliance with the NPPF and policies D1 and H4 of the approved Local Development Plan and the guidance contained in the MDDG SPD.

7. There shall be no development, storage of materials, parking of vehicles / plant or other construction activities taking place within 15 metres of the trees on the site subject of Tree Preservation Order 4/18.

REASON To protect the trees subject to TPO 4/18 and in the interests of the visual amenity and the character of the area and for their biodiversity value in accordance with Policies D1 and N2 of the Maldon District Local Development Plan and the Maldon District Design Guide.

8. The public's rights and ease of passage over restricted byway number 17 in Mayland shall be maintained free and unobstructed at all times.

REASON To ensure the continued safe passage of the public on the definitive right of way and accessibility in accordance with policies T1 and T2 of the Maldon District Local Development Plan.

9. The development hereby approved shall not be used for business or commercial use including for the purposes of livery or any riding school activity.

REASON To protect the amenity and character of the area and the amenity of neighbouring occupiers, in accordance with policies S1, S8 and D1 of the LDP.

10. The proposed development shall be undertaken in accordance with the information and recommendations contained within the submitted ecology report dated 9th February 2020..

REASON To ensure appropriate protection of protected species is provided in accordance with the guidance of the National Planning Policy Framework and policy N2 of the approved Local Development Plan.

**6. 20/00833/HOUSE- BEACHCREST, SEA VIEW PROMENADE, ST LAWRENCE, ESSEX, CM0 7NE**

<b>Application Number</b>	<b>20/00833/HOUSE</b>
<b>Location</b>	Beachcrest, Sea View Promenade, St Lawrence, Essex CM0 7NE
<b>Proposal</b>	Ground and first-floor extensions and formation of glazed Gambrel at first floor together with an extended roof terrace
<b>Applicant</b>	Mr & Mrs Gilly & Karl Terklesen
<b>Agent</b>	Mr Terry Hyland - Wood Architecture & Building
<b>Target Decision Date</b>	21.10.2020
<b>Case Officer</b>	Annie Keen
<b>Parish</b>	<b>ST LAWRENCE</b>
<b>Reason for Referral to the Committee / Council</b>	Member Call In – Councillor Mrs P A Channer Reason – Policy D1 – Design Quality and Built Environment (1a and 1b) and Policy S1 – Sustainable Development.

A Members' Update had been circulated prior to the meeting that detailed representations received from interested parties.

Following the Officer's presentation, the Agent, Mr Terry Hyland, addressed the Committee. The Chairman then moved the Officer's recommendation that planning application 20/00833/HOUSE- Beachcrest, Sea View Promenade, St Lawrence, Essex CM0 7NE be refused for the reasons as set out in section 8 of the report. This was seconded by Councillor R G Boyce, MBE.

Councillor Bassenger opened the discussion by saying that this was a great improvement on what was there at the moment and given the existing mix of styles would not be detrimental to the character of the area or the street scene. He felt the design was very attractive, the two buildings would benefit from the upgrade and proposed that the application be approved contrary to the Officer's recommendation for the aforementioned reasons.

Councillor Channer, having called -in the application, concurred with Councillor Bassenger. She had walked the area earlier to refresh her knowledge and noted the diverse mix of architecture and design, including different size balconies and windows. In response to a comment from the Lead Specialist: Development Management she agreed that the application was different to that previously refused in that it had been significantly altered and represented good design, in line with policies in the approved Local Development Plan (LDP). She was happy to second the proposal to approve and reasoned that the application complied with Policies D1 and H4 of the LDP.

There being no further discussion the Chairman put the Officer's recommendation to refuse the application to the Committee and upon a vote being taken it was lost. He then put Councillor Bassenger's proposal to approve the application, seconded by Councillor Channer to the Committee. Upon a vote being taken it was approved.

**RESOLVED** that the application be **APPROVED** subject to conditions delegated to the Lead Specialist Place. The conditions to be in line with those on approved application 20/00827/HOUSE.

**7. ANY OTHER ITEMS OF BUSINESS THAT THE CHAIRMAN DECIDES ARE URGENT**

Councillor Helm thanked the Committee for its support during his term as Chairman.

There being no further items of business the Chairman closed the meeting at 6.34 pm.

M W HELM  
CHAIRMAN

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**REPORT of  
DIRECTOR OF SERVICE DELIVERY**

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**To  
SOUTH EASTERN AREA PLANNING COMMITTEE  
25 NOVEMBER 2020**

<b>Application Number</b>	<b>20/00648/MLA</b>
<b>Location</b>	Land Between Chandlers and Creeksea Lane, Maldon Road, Burnham-on-Crouch
<b>Proposal</b>	Application for a modification to Section 106 legal agreement executed under planning application FUL/MAL/14/00356
<b>Applicant</b>	BDW Trading Limited
<b>Agent</b>	Rajwinder.Rayat - Shakespeare Martineau
<b>Target Decision Date</b>	01.10.2020 – EOT until 30.10.2020
<b>Case Officer</b>	Julia Sargeant
<b>Parish</b>	<b>BURNHAM-ON-CROUCH</b>
<b>Reason for Referral to the Committee / Council</b>	Not delegated to Officers

**1. RECOMMENDATION**

**APPROVE** the proposed amendments to the Section 106 legal agreement as set out in paragraph 3.9 of this report.


**2. SITE MAP**

Please see overleaf.

# Land Between Chandlers and Creeksea Lane, Maldon Road, Burnham on Crouch

20/00648/MLA



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	Organisation:	Maldon District Council
	Department:	Department
	Comments:	
	Date:	02/11/2020
www.maldon.gov.uk	MSA Number:	100018588

### 3. SUMMARY

#### 3.1 Site Description

3.2 The application site relates to strategic site allocation S2(i) as well as allocated employment site E1(p). Planning permission was granted under 14/00356/FUL (a hybrid application) for *‘Application for full planning permission for 180 homes (including 20 bungalows), new vehicular accesses onto Maldon Road, the spine road through the development, green space, and associated infrastructure. Outline planning permission with all matters reserved (except for access) is sought for a 50-60 bed care home, a nursery school, 3.4 hectares of B1, B2 and B8 with 0.65 hectares of allotments.’* The dwellings are currently under construction.

3.3 The remainder of Maldon Road is predominantly residential in nature, made up of an eclectic mix of dwellings. To the west of the application site is Creeksea Lane which is characterised by sporadic dwellings set within spacious plots.

#### 3.4 The Proposal

3.5 When consent was granted under 14/00356/FUL for the development of the site this was subject to a number of conditions as well as a legal agreement in the form of a Section 106 agreement. The legal agreement relates to:

- Affordable housing;
- Primary education contribution;
- Highways contribution;
- Early years and childcare contribution;
- Healthcare contribution;
- Youth facilities contribution; and
- Open space provision

3.6 This current application seeks a modification to the Section 106 Agreement attached to planning permission reference 14/00356/FUL dated 11 August 2017 (amended by deeds of variation subsequently entered into on 26 June 2018 (“the First Deed of Variation”), 23 January 2019 (“the Second Deed of Variation”) and 29 April 2019 (“the Third Deed of Variation”).).

3.7 The deeds of variation referenced above related to variations in technical wording and the definition of the affordable housing units in relation to plot numbers following subsequent approvals on the site. They did not alter any payment triggers or the overall amount of affordable housing to be provided.

3.8 This current application seeks the following modifications of the legal agreement:

1. deferral of the second part of the primary education contribution (£56,000) from occupation of 100<sup>th</sup> dwelling to occupation of 125<sup>th</sup> dwelling;
2. deferral of the second early years and childcare contribution (£200,000) from occupation of the 75<sup>th</sup> dwelling to occupation of the 125<sup>th</sup> dwelling;
3. deferral of the second part of the healthcare contribution (£27,000) from occupation of the 100<sup>th</sup> dwelling to occupation of the 125<sup>th</sup> dwelling; and

4. deferral of the youth facilities contribution (£97,500) from occupation of the 100<sup>th</sup> dwelling to occupation of the 125<sup>th</sup> dwelling.
- 3.9 Pursuant to paragraphs 1.2 of Schedule 4 Part 1 (relating to primary education), 1.3 of Schedule 4 Part 3 (relating to early years and childcare), 2 of Schedule 4 Part 4 (relating to healthcare), and 3 of Schedule 4 Part 4 (relating to youth facilities) of the current Section 106 agreement, the applicant is required to pay the relevant contributions (as defined therein) prior to occupation of the 75<sup>th</sup> or 100<sup>th</sup> dwellings. The modification proposed is to amend these paragraphs to require the contributions to be paid prior to occupation of the 125<sup>th</sup> dwelling.
- 3.10 The agent has advised that the applicant currently has circa 50 units built with 45 occupied. In terms of pushing the trigger points out they currently work on the basis of delivering 50 units per year so the deferment of payments from 100<sup>th</sup> dwelling to 125<sup>th</sup> would push the payment out by approximately 6 months, and from 75<sup>th</sup> dwelling to 125<sup>th</sup> dwelling (in relation to second early years and childcare) by approximately 1 year.
- 3.11 The agent has set out their reasons for applying for this modification which relate to the current Covid-19 pandemic and the Coronavirus (COVID-19): Community Infrastructure Levy guidance issued by the government on 13 May 2020. The guidance states in relation to S106 contributions that “*Where the delivery of a planning obligation, such as a financial contribution, is triggered during this period, local authorities are encouraged to consider whether it would be appropriate to allow the developer to defer delivery.*” The guidance also states that: “*Deeds of variation can be used to agree these changes. Local authorities should take a pragmatic and proportionate approach to the enforcement of section 106 planning obligations during this period. This should help remove barriers for developers and minimise the stalling of sites.*”
- 3.12 This application relates solely to a proposed modification to the legal agreement in terms of payment triggers and will not result in any change to the development already approved. The sole consideration of this application is therefore whether the amendment to the legal agreement is acceptable.

### **3.2 Conclusion**

- 3.2.1 The proposed modifications to the legal agreement are considered acceptable. The obligations will therefore serve their purposes equally well subject to the proposed modifications.

## **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:**

- 54 - 57 Planning Conditions and Obligations



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

- Policy S1 - Sustainable Development
- Policy S2 – Strategic Growth
- Policy S6 – Burnham on Crouch Strategic Growth
- Policy T1- Sustainable Transport
- Policy T2 - Accessibility
- Policy I1 – Infrastructure and Services

**4.3 Relevant Planning Guidance / Documents:**

- National Planning Policy Framework (NPPF)
- National Planning Policy Guidance (NPPG)
- Maldon District Design Guide (December 2017)

**4.4 Burnham-on-Crouch Neighbourhood Development Plan (2017):**

- Policy HO.1 – New Residential Development
- Policy HO.2 - Range and Type of New Residential Development
- Policy HO.8 – Housing Design Principles

**5. MAIN CONSIDERATIONS**

**5.1 Principle of Development**

5.1.1 As set out in paragraph 56 of the NPPF, planning obligations must only be sought where they meet all of the following tests (as set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010): a) necessary to make the development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development.

5.1.2 This application has been made under Section 106A of the Town and Country Planning Act 1990 for the modification of a Section 106 legal agreement executed under planning application 14/00356/FUL.

5.1.3 Section 106A of the Town and Country Planning Act deals with the modification and discharge of planning obligations and states that:

*‘Where an application is made to an authority under subsection (3), the authority may determine—*

*(a) that the planning obligation shall continue to have effect without modification;*

*(b) if the obligation no longer serves a useful purpose, that it shall be discharged; or*

*(c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.’*

- 5.1.4 In the assessment of such an application, regard shall be had to the judgement of *R (The Garden and Leisure Group Ltd) v North Somerset Council (2003) EWHC 1605 (Admin)* where it was concluded that “*there are four essential questions to be considered: what is the current obligation? What purpose does it fulfil? Is it a useful purpose? And if so, would the obligation serve that purpose equally well if it had effect subject to the proposed modifications?*”
- 5.1.5 Looking at each obligation in turn:
- 5.1.6 Primary Education Contribution
- 5.1.7 In response to the first two of these points (paragraph 5.1.4 above) it is noted that the obligation requires payment of monies (the second part of the primary education contribution) to Essex County Council prior to the occupation of the 100<sup>th</sup> dwelling. The primary education contribution is to be used towards the provision of additional capacity at the primary schools within the parishes of Burnham on Crouch and Southminster. In terms of whether the obligation is useful it is noted that the original consultation response from ECC in relation to education outlined that additional capacity would be required at local primary schools and the contribution is necessary to help fund this. The obligation therefore serves a useful purpose.
- 5.1.8 It is therefore clear that the crucial consideration as set out by the abovementioned case law is whether the obligation would serve its purpose equally well if it had effect subject to the proposed modification.
- 5.1.9 Consultation has taken place with the Infrastructure Planning Officer at Essex County Council who has confirmed that they do not see any major issues to resist the change in trigger for payment of this contribution. As detailed in paragraph 3.10 the change in trigger would be likely to equate to a delay in approximately 6 months for payment of the monies. As Essex County Council have raised no objection to the change in trigger it is considered that this element of the proposed modification to the legal agreement is acceptable and that the obligation will serve its purpose equally well subject to the proposed modification.
- 5.1.10 Early Years and Childcare Contribution
- 5.1.11 In relation to the case law referenced above at 5.1.4 it is noted that the obligation requires payment of monies (the second early years and childcare contribution) to Essex County Council (ECC) prior to the occupation of the 75<sup>th</sup> dwelling. The early years and childcare contribution is to be used towards the provision of nursery places at the existing nurseries in the Parish of Burnham-on-Crouch or the provision of a new early years and childcare centre in the Parish of Burnham-on-Crouch. In terms of whether the obligation is useful it is noted that the original consultation response from ECC in relation to early years and childcare noted that there is a need for additional spaces. Furthermore, according to ECC’s childcare sufficiency data, published in the summer of 2018, there is a need for additional places within this ward. The obligation therefore serves a useful purpose.
- 5.1.12 It is therefore clear that the crucial consideration as set out by the abovementioned case law is whether the obligation would serve its purpose equally well if it had effect subject to the proposed modification.

5.1.13 Consultation has taken place with the Infrastructure Planning Officer at Essex County Council who has confirmed that they do not see any major issues to resist the change in trigger for payment of this contribution. As detailed in paragraph 3.10 the change in trigger would be likely to equate to a delay in approximately 1 year for payment of the monies. As Essex County Council have raised no objection to the change in trigger it is considered that this element of the proposed modification to the legal agreement is acceptable and that the obligation will serve its purpose equally well subject to the proposed modification.

#### 5.1.14 Healthcare Contribution

5.1.15 In relation to the case law referenced above at 5.1.4 it is noted that the obligation requires payment of monies to the Council, which would then be passed to NHS England for healthcare contribution purposes to be used towards the provision of additional capacity at the health centre within the parish of Burnham-on-Crouch.

5.1.16 In terms of whether this is a useful purpose, it should be noted that during the consideration of application 14/00356/FUL it was highlighted that the development is likely to have an impact on the services of 1 GP Practice. The response stated that *‘The development would give rise to the need for improvements to capacity by way of extension, refurbishment, reconfiguration or relocation at the existing practice(s) that would need to be met by the developer’*. The obligation therefore serves a useful purpose.

5.1.17 It is therefore clear that the crucial consideration as set out by the abovementioned case law is whether the obligation would serve its purpose equally well if it had effect subject to the proposed modification.

5.1.18 Consultation has been undertaken with NHS England, however no response has been received to date. The proposed modification only relates to the second healthcare contribution, which is the smaller of the two (£27,000 (plus indexation) compared to £40,480 for the first payment) and the proposed revision to the trigger would result in an additional 25 dwellings being able to be occupied prior to the payment being made. Taking the government’s advice in relation to the deferment of S106 contributions (paragraph 3.11 of this report) it is considered that the delay of payment by this relatively small margin is unlikely to result in the obligation not serving its purpose. Furthermore, consultations to NHS England have been sent several times and it is reasonable to assume that should they have had any strong views in relation to this matter they would have raised them. Should any response be received prior to this report being considered it will be presented through a member update.

5.1.19 Overall it is considered that as the majority of the Healthcare contribution is unaffected by the proposed modification, and the relatively small change in the trigger point, the proposed modification to the legal agreement is acceptable and the obligation will serve its purpose equally well subject to the proposed modification.

#### 5.1.20 Youth Facilities Contribution

5.1.21. In relation to the case law referenced above at 5.1.4 it is noted that the obligation requires payment of the youth facilities contribution to the Council which would then

be used towards the provision of recreational shelters and/or skateboarding facilities and/or towards access to other community facilities within the Parish of Burnham-on-Crouch.

- 5.1.22 The requirement for the youth facilities contribution is identified in LDP policy I1 which is supported by the Infrastructure Delivery Plan (2013) and identifies the need for the youth facilities contribution. The obligation therefore serves a useful purpose.
- 5.1.23 It is therefore clear that the crucial consideration as set out by the abovementioned case law is whether the obligation would serve its purpose equally well if it had effect subject to the proposed modification.
- 5.1.24 The Countryside and Coast manager has been consulted in relation to the deferment of payment and has advised that given the relatively short timescales suggested for the revised trigger point to be reached, this is not an unreasonable variation request and therefore raises no objection to it being granted. Therefore, it is considered given the relatively small change in the trigger point, the proposed modification to the legal agreement is acceptable and the obligation will serve its purpose equally well subject to the proposed modification.

## **5.2 Conclusion**

- 5.2.1 It is considered that the proposed modifications to the legal agreement are acceptable taking into account the above assessment as well as the government guidance issued in May 2020. The obligations will therefore serve their purposes equally well subject to the proposed modifications.

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

- **14/00356/FUL** - Application for full planning permission for 180 homes (including 20 bungalows), new vehicular accesses onto Maldon Road, the spine road through the development, green space, and associated infrastructure. Outline planning permission with all matters reserved (except for access) is sought for a 50-60 bed care home, a nursery school, 3.4 hectares of B1, B2 and B8 with 0.65 hectares of allotments. – Approved - 11.08.2017
- **17/01033/NMA** - Application for non-material amendment following grant of Planning Permission of FUL/MAL/14/00356 (Application for full planning permission for 180 homes (including 20 bungalows), new vehicular accesses onto Maldon Road, the spine road through the development, green space, and associated infrastructure. Outline planning permission with all matters reserved (except for access) is sought for a 50-60 bed care home, a nursery school, 3.4 hectares of B1, B2 and B8 with 0.65 hectares of allotments) Amendment sought: Amendment to allotment aspect of area plan (drawing number 013-004-A04) to add clarity to what is proposed. – Approved - 10.10.2017
- **17/01242/FUL** - Variation of conditions 39 of approved application FUL/MAL/14/00356 (Application for full planning permission for 180 homes (including 20 bungalows), new vehicular accesses onto Maldon Road, the spine road through the development, green space, and associated infrastructure. Outline planning permission with all matters reserved (except

- for access) is sought for a 50-60 bed care home, a nursery school, 3.4 hectares of B1, B2 and B8 with 0.65 hectares of allotments.). – Approved - 13.07.2018
- **18/00093/FUL** - Variation of condition 18 on approved planning permission FUL/MAL/14/00356 (Application for full planning permission for 180 homes (including 20 bungalows), new vehicular accesses onto Maldon Road, the spine road through the development, green space, and associated infrastructure. Outline planning permission with all matters reserved (except for access) is sought for a 50-60 bed care home, a nursery school, 3.4 hectares of B1, B2 and B8 with 0.65 hectares of allotments) – Approved - 13.07.2018
- **18/00472/FUL** - Temporary sales access – Approved - 19.06.2018
- **18/01424/FUL** - Variation of condition 18, 21 and 23 on approved planning permission FUL/MAL/18/00093 (Variation of condition 18 on approved planning permission FUL/MAL/14/00356 (Application for full planning permission for 180 homes (including 20 bungalows), new vehicular accesses onto Maldon Road, the spine road through the development, green space, and associated infrastructure. Outline planning permission with all matters reserved (except for access) is sought for a 50-60 bed care home, a nursery school, 3.4 hectares of B1, B2 and B8 with 0.65 hectares of allotments) – Approved - 01.04.2019
- **19/00026/FUL** - Installation of a temporary sales area and the change of use of residential garages located between plots 1 and 2 to a marketing suite for the period Feb 2019 - Dec 2021 including the construction of 8 car parking spaces and brick entrance features. – Approved - 21.03.2019
- **19/01257/FUL** - Erection of 36 dwellings, with associated off-street parking, public open space and landscaping – Refused - 18.03.2020

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

### 7.1 **Representations received from Parish / Town Councils**

<b>Name of Parish / Town Council</b>	<b>Comment</b>	<b>Officer Response</b>
Burnham Town Council	Recommends refusal. Comments that the applicant has taken advantage of the pandemic for the reasons to defer this S106 payment. Raised a concern that if the 125 <sup>th</sup> property never sells then no contribution would be received.	<p>The application has been submitted on the basis of government advice in relation to S106 payments and the current ongoing pandemic. This advice was issued in May of this year.</p> <p>In relation to the receipt of the contributions it is common for there to be occupation triggers and this is found in most legal agreements relating to largescale major development and strategic sites. There is currently consent for 180 dwellings</p>

<b>Name of Parish / Town Council</b>	<b>Comment</b>	<b>Officer Response</b>
		<p>across the strategic site and the change in payment triggers to 125 dwellings does not take it so close to the end of the development for it to be financially beneficial to the developer to not finish the development.</p> <p>Furthermore, as per the assessment above (section 5 of this report), the revised triggers for the payments are not considered to detrimentally impact on delivery of the scheme in relation to infrastructure capacity.</p>

## **7.2 Statutory Consultees and Other Organisations**

<b>Name of Statutory Consultee / Other Organisation</b>	<b>Comment</b>	<b>Officer Response</b>
Infrastructure Planning Officer (ECC Education)	No major issues to resist this from ECC's position	Noted and referred to within sections 5.1.9 and 5.1.13 above

## **7.2 Internal Consultees**

<b>Name of Internal Consultee</b>	<b>Comment</b>	<b>Officer Response</b>
Coast and Countryside	Given the relatively short timescales suggested for the revised trigger point to be reached, this is not an unreasonable variation request and does not object to it being granted.	Noted and referred to within section 5.1.21

## **7.3 Representations received from Interested Parties**

7.3.1 No letters were received.

**8 RECOMMENDATION - APPROVE the proposed modifications to the legal agreement as set out in paragraph 3.9 of this report.**



**REPORT of  
DIRECTOR OF SERVICE DELIVERY**

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to  
**SOUTH EASTERN AREA PLANNING COMMITTEE  
25 NOVEMBER 2020**

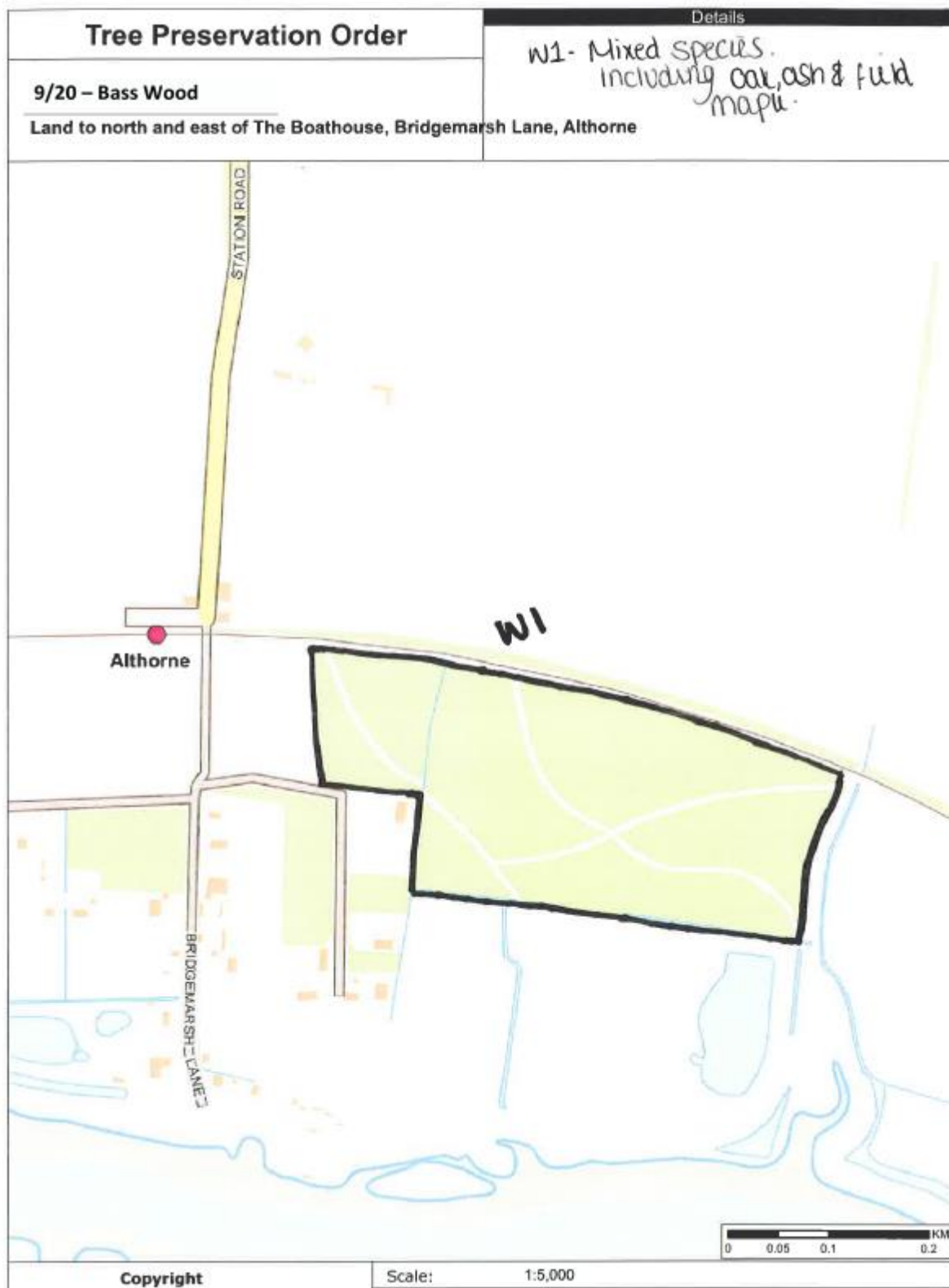
<b>Application Number</b>	<b>TPO 9/20</b>
<b>Location</b>	Bass Wood (land to the north and east of The Boathouse, Bridgemarsh Lane, Althorne)
<b>Proposal</b>	Confirmation of TPO 9/20
<b>Owner</b>	J and H Wilsdon Agriculture, Lee and Marisa Batt
<b>Confirmation by</b>	23.12.2020
<b>Case Officer</b>	Hayleigh Parker-Haines
<b>Parish</b>	<b>ALTHORNE PARISH COUNCIL</b>
<b>Reason for Referral to the Committee / Council</b>	Decision on confirmation of a Tree Preservation Order as per the Council's scheme of delegation

**1. RECOMMENDATION**

**CONFIRM Tree Preservation Order (TPO) 9/20** without any modifications.

**2. SITE MAP**

Please see overleaf.





### **3. SUMMARY**

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

- 3.1.1. In March 2019, the Council received information that part of the above woodland was up for sale. The sale of this land was considered to put the woodland at risk and therefore, a Tree Evaluation Method for Preservation Orders (TEMPO)) assessment, which is a professionally and nationally accepted system of scoring the amenity value of a tree, was carried out. The TEMPO assessment scored the woodland 19 out of 25 and concluded that the woodland was worthy of a Tree Preservation Order (TPO). Therefore, a TPO (3/19) was served on 1 April 2019. A letter of objection was received relating to the serving of TPO 3/19 on Land to the north and east of The Boathouse, Bridgemarsh Lane, Althorne and therefore, the decision as to whether or not this was to be confirmed was brought to members to determine on 12 August 2019, whereby members voted not to confirm this TPO for a number of reasons as detailed below.
- 3.1.2 During the discussion surrounding the confirmation of this TPO, members raised concerns regarding the validity of the information provided in relation to the sale of the woodland: as a point of clarity the Woodland has since been sold. Furthermore, concerns were raised in relation to the fact that the trees had been planted under a grant from the Forestry Commission and therefore, the trees are protected. It is pertinent to note that this does not prevent the Local Planning Authority (LPA) from serving a Tree Preservation on the woodland, just that any works agreed with the Forestry Commission would override the Tree Preservation Order. Permission would only be required from the Forestry Commission should the owners wish to fell over 5m<sup>3</sup> in one calendar quarter, any lesser works are unlikely to require a license from the Forestry Commission. Whilst there is a contractual agreement between the owners of the woodland and the Forestry Commission which expires in 2030, this does not necessarily protect the trees, just that should the woodland (as a whole) be removed the grant would need to be paid back.
- 3.1.3 Furthermore, it was brought to Members' attention that this woodland was labelled as green space and an important amenity space in the current LDP. However, when this was put to the Inspector it was requested to be removed. However, the serving of a TPO would not class this woodland as green space or amenity space.
- 3.1.4 Since the previous decision to not confirm the TPO, the woodland has been sold and the LPA have received planning applications which have included part removal of the woodland to allow vehicular access and drainage works. Furthermore, concerns have been raised in relation to large machinery driving through the area and part of a hedgerow having been removed. Therefore, it is considered that the Woodland is at threat and a subsequent TPO has been served (9/20).

#### **3.2 The Site**

- 3.2.1 The Woodland is located to the eastern side of Bridgemarsh Lane, to the North and east of The Boathouse. The woodland is a feature that can be seen from Bridgemarsh Lane and public vantage points within the surrounding area; it is therefore considered to be an important landscape feature. This is a mixed species woodland which

includes oak, Ash and Field Maple.

- 3.2.2 The woodland comprises of young trees which are considered to have a significant retention span which would provide significant amenity value to the character and appearance of the site and surrounding area in the future. Therefore, it is considered that this woodland plays a significant role in underscoring the value of the visual amenity of the surrounding area.

### **3.3 Ownership**

- 3.3.1 The Woodland is made up of a number of separate parcels of land owned and managed by a number of different people. The known owners at the time of writing this report are Mr Lee Batt, Mrs Batt and J and H Wilsdon Agriculture. It should be noted that the woodland was planted using a grant from the Forestry Commission in 2002.

## **4 MAIN RELEVANT POLICIES**

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

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

- Planning Practice Guidance (PPG)

### **4.2 Government Guidelines:**

- 4.2.1 Government guidelines advise that: the LPA is required to take into account all duly made objections and representations before deciding whether to confirm the TPO.
- 4.2.2 If Members decide to Confirm TPO 9/20, the owners have the right to make an application to the High Court to challenge the validity of the TPO. There are specific grounds on which this application must be made:
1. that the TPO is not within the powers of the Act, or
  2. that the requirements of the Act or Regulations have not been complied with in relation to the TPO.
- 4.2.3 There are costs involved in this procedure which can be awarded. An application must be made within six weeks of the date the TPO was confirmed.

## **5 MAIN CONSIDERATIONS**

- 5.1 The woodland is to the eastern side of Bridgemarsh Lane, to the north and east of The Boathouse. It is a feature of the landscape of the area and is considered to have future high amenity value as once the trees have reached maturity, they will be highly visible and prominent from the public realm.
- 5.2 Planning Practice Guidance states (Paragraph 10 reference ID: 36-010-21040306) *'It may be expedient to make an Order if the authority believes there is a risk of trees*

*being felled, pruned or damaged in ways which would have a significant impact on the amenity of the area. But it is not necessary for there to be immediate risk for there to be a need to protect trees. In some cases the authority may believe that certain trees are at risk as a result of development pressures and may consider, where this is in the interests of amenity, that it is expedient to make an Order. Authorities can also consider other sources of risks to trees with significant amenity value. For example, changes in property ownership and intentions to fell trees are not always known in advance, so it may sometimes be appropriate to proactively make Orders as a precaution.*’. The Council have received concerns that large machinery has been accessing the area and could cause damage to the trees and that part of a hedgerow has been removed. The woodland is not located within a Conservation Area and therefore did not have any form of statutory protection prior to the serving of the TPO. Therefore, any of the trees within this woodland could have been removed without the permission of Maldon District Council (MDC), which would damage the amenity value that the woodland offers within the surrounding landscape.

- 5.3 In the interest of protecting this prominent landscape feature and the amenity value of the woodland within the locality, the woodland was assessed using the Tree Evaluation Method for Preservation Orders (TEMPO) which is designed as a guide to decision making and stands as a record that a systematic assessment has been undertaken. The TEMPO considers all of the relevant factors in the TPO decision making chain including amenity assessment, expediency assessment and decision guide. Within the assessment the woodland scored highly for the suitability of a TPO for the amenity of the woodland as there are medium trees with limited visibility to the public with tree groups or principle members of groups important for their cohesion. The expediency assessment reflected the perceived threat of the tree as mentioned in section 5.2. The woodland scored an overall total 19 out of 25 which means that the woodland would definitely merit a TPO.
- 5.4 It is worth noting that the guidance provided to sit alongside the TEMPO assessment acknowledged that the reason for serving the TPO can be quite minor (precautionary only). It is worth noting that a number of applications have been submitted to the LP A since the 12 August 2019 in relation to the woodland. This has resulted in officers considering that there is a greater threat to the trees than there was at the time of the last decision.
- 5.5 It should be noted that the TPO would not prevent works to the trees from being carried out, however it would control any works to ensure that they were suitable, justified and did not harm the health of the trees within, or the amenity value the woodland as a whole offers to the surrounding area.

## **6 ANY RELEVANT SITE HISTORY**

- 6.1 **3/19** – TPO served – Not confirmed.

## **7 CONSULTATIONS AND REPRESENTATIONS RECEIVED**

### **7.1 Representations received from Interested Parties**

- 7.1.1 One letter was received **objecting** to the serving of the TPO 9/20 and the reasons for objection are summarised as set out in the table below:

Objection Comment	Officer Response
<p>The woodland is not under threat, prior to the new owner purchasing the land, Ash mortality was potentially damaging a third of the woodland. To stem further deterioration to an impenetrable mass there are two management options available:</p> <ul style="list-style-type: none"> <li>- Clearance and replanting the worst areas</li> <li>- Selective clearing and replanting. As there is no prospect of wood harvest and a further grant aid being unlikely, the possibility of farming out the land has been explored. This would include dividing the wood into 0.5 acre woodlets which could be leased.</li> </ul> <p>This difficulty with this is controlling the enthusiasm of new wood owners as to what they can and can't do by way of serving a TPO.</p>	<p>As mentioned in section 5.5 of this report. There does not need to be significant threat to the woodland for a TPO to be served. The woodland scored 19 out of 25 and therefore, would definitely merit the serving of a TPO to protect the future amenity of the trees and the contribution they make to the surrounding area. It should be acknowledged that the serving of a TPO on this woodland would <b>not</b> prevent any works being carried out on the Woodland, this can be for individual trees or for a Woodland Management Plan that can last 5 years. Therefore, it should not cause issues should any works need to be undertaken to the trees.</p>
<p>The Forestry Commission grant manages Bass Wood. Any damage will involve repayment of a considerable grant. I am not against a TPO as it ups the amenity value of the wood but it duplicates existing controls and raises even further expectations of local vigilantes who might one day be a problem for you. This is another example of The Council gladly finding work from complainants in contrast to rate paying businesses.</p>	<p>Although, the trees are planted using a grant from the Forestry Commission, this does not prevent the Local Planning Authority from serving a Tree Preservation on the woodland, just that any works agreed with the Forestry Commission would override the Tree Preservation Order. The TPO would protect the trees from unacceptable works, whereas the Forestry Commission and the restrictions of the grant relate to the removal of the trees. Furthermore, the serving of a Tree Preservation Order does not prevent works/felling of the trees, an application is required to ensure that the proposed works are appropriate and represent good tree management.</p>

## **8      CONCLUSION**

- 8.1      The woodland subject of the TPO makes a contribution to the character and appearance of the surrounding area and has the potential to provide significant amenity value to the character and appearance of the surrounding area due to the size and density of the woodland. Given that the woodland has a TEMPO score of 19, it is considered that the TPO should be confirmed to prevent inappropriate works being carried out which could harm the amenity value and overall health of the woodland.

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