

APOLOGIES Committee Services
Email: Committee.clerk@maldon.gov.uk

DIRECTOR OF STRATEGY,
PERFORMANCE AND
GOVERNANCE
Paul Dodson

25 January 2022

Dear Councillor

You are summoned to attend the meeting of the;

NORTH WESTERN AREA PLANNING COMMITTEE

on **WEDNESDAY 2 FEBRUARY 2022** at **7.30 pm**

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

Please Note: Due to current social distancing restrictions the Council is limited on the number of physical attendees in a meeting. Therefore, members of the public wishing to speak under the Public Participation Protocol are requested to attend remotely via Microsoft Teams. Members of the press are advised to view the meetings via the Council's YouTube channel: <https://www.maldon.gov.uk/watchlive> where all meetings are streamed live.

To register your request to speak please submit a [Public Access form](#) (to be submitted by 12noon on the working day before the Committee meeting). All requests will be considered on a first-come, first-served basis.

A copy of the agenda is attached.

Yours faithfully



Director of Strategy, Performance and Governance
COMMITTEE MEMBERSHIP:

CHAIRMAN

Councillor Mrs M E Thompson

VICE-CHAIRMAN

Councillor J V Keyes

COUNCILLORS

M F L Durham, CC
Mrs J L Fleming, CC
C P Morley
R H Siddall
E L Stephens
Miss S White
1Vacancy





AGENDA
NORTH WESTERN AREA PLANNING COMMITTEE
WEDNESDAY 2 FEBRUARY 2022

1. **Chairman's notices**

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 1 December 2021 (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. **21/01071/OUT - Land North of Poplar Grove Chase, Great Totham** (Pages 13 - 30)

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

6. **TPO 4/21 - Front boundary between 37 and 39 Fish Street, Goldhanger, CM9 8AT** (Pages 31 - 36)

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

7. **TPO 5/21 - Primrose, Howe Green Road, Purleigh, CM3 6PX** (Pages 37 - 42)

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

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

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](#) no later than noon on the working day before the Committee meeting.
4. For further information please see the Council's website – www.maldon.gov.uk/committees

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

NOTICES**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.

Fire

In the event of a fire, a siren will sound. Please use the fire exits marked with the green running man. The fire assembly point is outside the main entrance to the Council Offices. Please gather there and await further instruction.

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 Televisions (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)

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

Supplementary Planning Guidance and Other Advice (continued)

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.

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**MINUTES of
NORTH WESTERN AREA PLANNING COMMITTEE
1 DECEMBER 2021**

PRESENT

Chairman	Councillor Mrs M E Thompson
Vice-Chairman	Councillor J V Keyes
Councillors	M F L Durham, CC, Mrs J L Fleming, CC, K W Jarvis, C P Morley, E L Stephens and Miss S White
In attendance	Councillor C Morris

392. CHAIRMAN'S NOTICES

The Chairman welcomed everyone present and went through some general housekeeping arrangements for the meeting.

393. APOLOGIES FOR ABSENCE

An apology for absence was received from Councillor R H Siddall.

394. MINUTES OF THE LAST MEETING

RESOLVED by assent that the Minutes of the meeting of the Committee held on 3 November 2021 be approved and confirmed.

395. DISCLOSURE OF INTEREST

Councillor M F L Durham declared a non-pecuniary interest as a Member of Essex County Council, a statutory consultee on all planning related matters.

Councillor Mrs J L Fleming declared a non-pecuniary interest as a Member of Essex County Council, a statutory consultee on all planning related matters.

396. 21/00936/FUL - LAND REAR OF HILL BARN, RECTORY LANE, WOODHAM MORTIMER

Application Number	21/00936/FUL
Location	Land Rear Of Hill Barn Rectory Lane Woodham Mortimer
Proposal	Proposed conversion of existing equestrian/storage barn building to form offices (Use Class E (g)) and associated development (Re-submission of planning application ref: 20/01021/FUL refused on the 15th January 2021)
Applicant	Mr Mervyn Clarke

Agent	Mr Matthew Wood - Phase 2 Planning
Target Decision Date	03.11.2021 EOT 03.12.2021
Case Officer	Hannah Bowles
Parish	WOODHAM MORTIMER
Reason for Referral to the Committee / Council	Member Call In by Councillor K W Jarvis Reason: I have concerns about the impact on the countryside - increase in traffic. Possible negative impact on neighbouring properties. I feel it merits debate by members. Departure from Local Plan

Following the Officer's presentation, an Objector, Steven Gough and the Agent, Matthew Wood, addressed the Committee. The Chairman then opened the debate.

A discussion ensued during which Members commented on the potential adverse impact the barn conversion would have on the countryside and neighbouring properties.

Councillor M F L Durham said that there had been some legitimate concerns but acknowledged that these had now been addressed at section 8 in the Officer's report together with the additional two conditions. He proposed that the Officers' recommendation be agreed. It was noted that this application was for non-residential use only, should this change in future it would be subject to a further planning application.

At this point, the Committee acknowledged the importance of including electric car charging points in non-residential applications and noted that the barn conversion to office space would create jobs for the local area.

There being no further debate the Chairman put Councillor Durham's proposal, duly seconded, to approve the application to the Committee and upon a vote being taken the application was unanimously approved.

RESOLVED that the application be **APPROVED** subject to the following conditions together with the two additional conditions (electric charging points and boundary treatments) and two amended conditions (materials and external lighting)

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2 The development hereby permitted shall be carried out in accordance with the following approved plans and documents: 13295 01A, 13295 02, 13295 06G, 13295 03A, 13295 04A, 13295 05A, 13295 07D, 13295 08C, 13295 09C, 13295 10 and 13295 11.
- 3 Prior to their use in the development hereby approved samples or details of the materials to be used in the building, subject of the conversion hereby approved, shall be submitted to the Local Planning Authority for approval and retained as such thereafter. The existing shutters currently in situ shall also be retained in perpetuity.
- 4 Full details of the parking arrangements, which shall be in accordance with the adopted Maldon District Vehicle Parking Standards, shall be submitted to and approved in writing by the local planning authority. Further, a fast charging point shall be provided adjacent to at least each of three parking spaces. The approved parking shall thereafter be kept available for such purposes in perpetuity. The development shall be completed wholly in accordance with the approved details, prior to the occupation of the development hereby approved, and thereafter permanently retained.

- 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), premises shall only be used for purposes falling within Use Class E(g)(i) of the Schedule to the Town & Country Planning Use Classes Order 1987 (as amended) and for no other purpose whatsoever, without express consent having been obtained from the local planning authority beforehand.
- 6 No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.
- 7 All loading / unloading / reception and storage of building materials and the manoeuvring of all vehicles, including construction traffic shall be undertaken within the application site, clear of the public highway
- 8 Prior to first occupation of the development, the cycle parking shall be provided in accordance with the details shown on plan reference 13295 11 and retained at all times.
- 9 No development works above ground level shall occur until 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. The scheme shall ensure that for a minimum:
1. The development should be able to manage water on site for 1 in 100 year events plus 40% climate change allowance.
 2. Run-off from a greenfield site for all storm events that have a 100% chance of occurring each year (1 in 1 year event) inclusive of climate change should be no higher than 10/l/s and no lower than 1/l/s. The rate should be restricted to the 1 in 1 greenfield rate or equivalent greenfield rates with long term storage (minimum rate 1l/s) or 50% betterment of existing run off rates on brownfield sites (provided this does not result in a runoff rate less than greenfield) or 50% betterment of existing run off rates on brownfield sites (provided this does not result in a runoff rate less than greenfield)

You are advised that in order to satisfy the soakaway condition the following details will be required:- details of the area to be drained, infiltration rate (as determined by BRE Digest 365), proposed length, width and depth of soakaway, groundwater level and whether it will be rubble filled.

- Where the local planning authority accepts discharge to an adopted sewer network you will be required to provide written confirmation from the statutory undertaker that the discharge will be accepted.
- 10 No development works above ground level shall occur until details of the foul 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.
- 11 No storage of raw materials or finished goods is to take place outside the building
- 12 Full details of both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority prior to the first beneficial use of conversion hereby approved and these works shall be carried out as approved. These details shall include, for example:
- i. Proposes finished levels contours;
 - ii. Means of enclosure;
 - iii. Car parking layouts;
 - iv. Other vehicle and pedestrian access and circulation areas;
 - v. Hard surfacing materials;

- vi. Minor artefacts and structures (e.g furniture, play equipment, refuse or other storage units, signs, lighting);
- vii. Proposed and existing functional services above and below ground (e.g drainage power, communications cables, pipelines etc, indicating lines, manholes, supports);
- viii. Retained historic landscape features and proposals for restoration, where relevant.

The soft landscape works shall be carried out as approved within the first available planting season (October to March inclusive) following the occupation of the conversion hereby approved unless otherwise 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.

The hard landscape works shall be carried out as approved prior to the first use / occupation of the development hereby approved and retained and maintained as such thereafter.

- 13 The hours of operation of the, E(g)(i) unit hereby permitted shall be:
Monday to Friday - 0800 hours until 1800 hours
Saturday - 0800 hours to 1300 hours
Sundays & Bank holidays - No Operation
- 14 All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Bat Survey Report (Essex Mammal Surveys, September 2021) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.
- 15 A Biodiversity Enhancement Strategy for Protected and Priority species shall be submitted to and approved in writing by the local planning authority following the recommendations made within the Bat Survey Report (Essex Mammal Surveys, September 2021).
The content of the Biodiversity Enhancement Strategy shall include the following:
 - 1. Purpose and conservation objectives for the proposed enhancement measures;
 - 2. detailed designs to achieve stated objectives;
 - 3. locations of proposed enhancement measures by appropriate maps and plans;
 - 4. timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
 - 5. persons responsible for implementing the enhancement measures;
 - 6. details of initial aftercare and long-term maintenance (where relevant).

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

- 16 Prior to the first occupation of the building a lighting design scheme for biodiversity shall be submitted to and approved in writing by the local planning authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory.

All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.

- 17 No means of external illumination of the site shall be installed or operated unless otherwise agreed in writing by the local planning authority. The external illumination shall be retained as such thereafter and operated in accordance with the approved details.
- 18 Details of the siting, height, design and materials of the treatment of all boundaries including gates, fences, walls, railings and piers or other means of enclosure shall be submitted to and approved in writing by the local planning authority prior to first use/occupation of the development hereby approved. The screening as approved shall be constructed prior to the first use/occupation of the development to which it relates and be retained as such thereafter.

397. 21/01063/HOUSE - LAVENA, 38 WOODROLFE ROAD, TOLLESBURY, CM9 8SD

Application Number	21/01063/HOUSE
Location	Lavena, 38 Woodrolfe Road, Tollesbury, CM9 8SD
Proposal	One and a half storey side extension incorporating dormer windows to match existing.
Applicant	Chrissie Hitchins
Agent	Mr Adam Herbert – Adam Herbert Design
Target Decision Date	09.12.2021
Case Officer	Jade Elles
Parish	TOLLESBURY
Reason for Referral to the Committee / Council	Member of staff

Following the Officer's presentation, the Chairman opened the debate.

A discussion ensued where the overarching concern was the dominant nature of the proposed development by way of loss of light and proximity to the neighbouring property.

Councillor J L Fleming proposed that the application be refused in accordance with the Officers' recommendation. This was duly seconded and upon a vote being taken agreed.

RESOLVED that the application be **REFUSED** for the following reasons:

1. The proposal, given its height, design and proximity to the neighbouring property would result in harm to the amenities of that neighbouring property by way of overbearingness, loss of light and outlook to a habitable room. The proposal is therefore in conflict with policies. D1 and H4 of the Maldon District Local Development Plan 2017, the Maldon District Design Guide, and the National Planning Policy Framework 2021
2. The, proposal, given its height, design and proximity to the neighbouring property, would jar uncomfortably through a clash of roof forms and scale, resulting in an anomalous relationship to the detriment of the streetscene in this part of Woodrolfe Road. The proposal is therefore in conflict with policies. D1 and H4 of the Maldon District Local Development Plan 2017, the Maldon District Design Guide, and the National Planning Policy Framework 2021.

Prior to the closure of the meeting Councillor E L Stephens asked if Planning Officers could provide images from Google Street View in future meetings so that the committee can see the full street scene when making decisions.

The meeting closed at 8.20 pm.

MRS M E THOMPSON
CHAIRMAN



**REPORT of
DIRECTOR OF SERVICE DELIVERY**

to
**NORTH WESTERN AREA PLANNING COMMITTEE
2 FEBRUARY 2022**

Application Number	21/01071/OUT
Location	Land North of Poplar Grove Chase, Great Totham
Proposal	Application for outline planning permission for one detached 3-bedroom dwelling with all matters reserved
Applicant	Mr A Lawson
Agent	Mrs Melanie Bingham-Wallis – Foxes Rural Consultants
Target Decision Date	EOT 09.02.2022
Case Officer	Devan Hearnah
Parish	GREAT TOTHAM
Reason for Referral to the Committee / Council	Member Call In: - Councillor J V Keyes. Policies D1 and H4 & S1.

1. RECOMMENDATION

REFUSE for the reasons set out in Section 8 of this report.

2. SITE MAP

Please see below.

21/01071/OUT
NWAC



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	Organisation: Maldon District Council
	Department: Department
	Comments:
	Date: 12/01/2022
	MSA Number: 100018588

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 Broad Street Green Road, to the rear of The Old Dairy, a commercial premise. The site currently comprises a dilapidated stable building, trees and scrub. The site shares an access with The Old Dairy, which is taken from the western side of Broad Street Green Road. The site also lies to the north of Poplar Grove Chase, within a paddock. There is a barn to the northwest of the application site which was developed under approval 18/00056/FUL.
- 3.1.2 It is also worth noting that there is outline permission to replace an existing commercial building to the east of the application site with up to three dwellings. This site is directly adjacent to the application site and there is a small area of intervening land between the neighbouring site and the application site.
- 3.1.3 The surrounding area has a semi-rural nature. Aside from the barn, the area to the north of the application site is open countryside. As mentioned, there is a commercial premise to the east along with linear residential development fronting Broad Street Green Road and Poplar Grove Chase to the south. To the far west and south of the site is more open countryside/agricultural land.
- 3.1.4 Outline planning permission with all matters reserved is sought for a three-bedroom custom build and self-build detached dwelling. In this context, as all matters are to be reserved for future consideration, the following description of the proposal in terms of the access, appearance, layout, landscaping and scale of the development are indicative only.
- 3.1.5 The indicative plans show a traditionally designed, two storey residential dwelling, with an eaves height of 4.8m and a ridge height of 7.8m. The dwelling would have a gable roof running east to west with the principal elevation facing north. The dwelling would have a width of 9m and a depth of 7m. There would be two parking spaces to the front of the property and an area of private amenity space to the south.
- 3.1.6 The application follows the dismissal of two appeals at the site (16/00743/FUL and 18/01191/FUL) both of which were for a single dwelling, albeit larger than what is being proposed as part of this application (7 bedrooms and 5 bedrooms respectively) and on a larger site, which included the application site.
- 3.1.7 The 2018 scheme was of a lesser scale than the 2016 dismissed scheme, but larger than what is being proposed as part of this application. In determining the 2018 appeal the Inspector dismissed the proposal on the basis that the proposal would be unrelated to the existing ribbon development along Poplar Grove Chase, and Broad Street Green Road, and that the form of the proposed dwelling would not have followed that of other semi-detached and detached dwellings, which generally have limited footprints within smaller plots. This was also concluded by the previous Inspector relating to the 2016 scheme. The Inspector also acknowledged that although the site was surrounded by built form to a degree, there are sufficient gaps connecting the site with the truly open countryside to give it an open field character and appearance. It was considered that the North Heybridge Garden Suburb would only add value to the appeal site as an element of countryside as a built-up area and the presence of the barn to the north did not undermine that finding. Although the revised scheme would have been less visible from the public realm than the 2016 scheme, it was noted that the development would still be prominent from the surrounding properties. In concluding the Inspector found that not only is the proposal outside of the defined settlement boundary and had been found to be

3.1.8 For clarification purposes the site plan for the 2018 scheme and the proposed scheme have been provided below to show the differences in the site size. Whilst the site has been reduced in size, the above findings are directly applicable to the application site and form a material consideration in assessing this application. Therefore, these matters will be revisited in the assessment below.

Current proposed scheme



3.2 Conclusion

- 3.2.1 Having taken all material planning considerations into account, an objection is raised to the visual impact of the development on the character and appearance of the site and the surrounding area. The development would represent an unwelcome visual intrusion into the site and would result in an unacceptable form of backland development which would urbanise the site. The limited social and economic benefits of the proposal would not outweigh the environmental harm, it would therefore be contrary to the National Planning Policy Framework (NPPF) and the policies of the 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 2021 including paragraphs:

- 7 Sustainable development
- 8 Three objectives of sustainable development
- 10-12 Presumption in favour of sustainable development
- 38 Decision-making
- 47-50 Determining applications
- 54-58 Planning Conditions and Obligations
- 60-80 Delivering a sufficient supply of homes

- 92–103 Promoting healthy and safe communities
- 104–113 Promoting sustainable transport
- 119–123 Making effective use of land
- 126–136 Achieving well-designed places
- 152–169 Meeting the challenge of climate change, flooding and coastal change
- 174–188 Conserving and enhancing the natural environment

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

- S1 Sustainable Development
- S8 Settlement Boundaries and the Countryside
- D1 Design Quality and Built Environment
- D2 Climate Change and Environmental Impact of New Development
- H2 Housing Mix
- H4 Effective Use of Land
- N2 Natural Environment and Biodiversity
- I1 Infrastructure and Services
- T1 Sustainable Transport
- T2 Accessibility

4.3 Relevant Planning Guidance / Documents:

- National Planning Policy Framework (NPPF)
- Maldon District Design Guide (MDDG) 2017 SPD
- Maldon District Vehicle Parking Standards (VPS) SPD

5. MAIN CONSIDERATIONS

5.1 Principle of Development

5.1.1 The Section 38(6) of the Planning and Compulsory Purchase Act 2004, Section 70(2) of the 1990 Act and paragraph 47 of the NPPF require that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. In this case the development plan comprises of the approved LDP.

5.1.2 The proposed development is for the construction of one, three-bedroom house.

5.1.3 As part of the drive to deliver new homes the Government has stated that there is a need for councils to demonstrate that there are sufficient sites available to meet the housing requirements for the next five years; this is known as the Five-Year Housing Land Supply (5YHLS). The Council has published an up-to-date 5YHLS which concludes that the Council cannot currently demonstrate a 5YHLS.

5.1.4 Where a Local Planning Authority (LPA) is unable to demonstrate that it has a 5YHLS, the presumption in favour of sustainable development will apply; this is known as the 'Tilted Balance'. This position is set out in paragraph 11d, together with its footnote 7, of the NPPF which states:

"For decision taking this means:

"(d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

“(i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

“(ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”

Footnote 8 - 8 This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73)

- 5.1.5 At the heart of the NPPF 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 policy in respect of housing delivery within the planning system and emphasises the need to plan positively for appropriate new development. The NPPF replaces those Local Plan policies that do not comply with the requirements of the NPPF in terms of housing delivery. In addition, leading case law assists the LPA in its application of NPPF policies applicable to conditions where the 5YHLS cannot be demonstrated (*Suffolk Coastal DC v Hopkins Homes and Richborough Estates v Cheshire East BC* [2017] UKSC 37).
- 5.1.6 It is necessary to assess whether the proposed development is ‘sustainable development’ as defined in the NPPF. If the site is considered sustainable then the NPPF’s ‘presumption in favour of sustainable development’ applies. However, where the development plan is ‘absent, silent or relevant policies are out of date’, planning permission should be granted ‘unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or that specific policies in this Framework indicate development should be restricted’.
- 5.1.7 In judging whether a residential scheme should be granted, it is necessary to consider the weight attributed to the planning benefits which the proposal offers in making up the current housing land supply shortfall, against the adverse impacts identified (if any) arising from the proposal in relation to the policies contained within the NPPF and relevant policies in the Local Plan.
- 5.1.8 There are three dimensions to sustainable development as defined in the NPPF. These are the economic, social and environmental roles. The LDP through Policy S1 re-iterates the requirements of the NPPF but there are no specific policies on sustainability in the current Local Plan. Policy S1 allows for new development within the defined development boundaries. The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. However, because the Council cannot demonstrate an up to date five year supply of deliverable housing and on the basis that sites outside of the defined development boundaries could be judged to be ‘sustainable development’ through the three dimension tests of the NPPF, the LPA are obliged to exercise its judgement as to whether to grant planning permission having regard to any other relevant planning policies and merits of the scheme.
- 5.1.9 Paragraph 79 of the NPPF states that:
- 5.1.10 *‘To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will*

support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby'.

- 5.1.11 Whilst it is acknowledged that the two previous Inspectors deemed the site not to be accessible in sustainability terms, there have been more recent planning decisions within the vicinity of the site that have found the immediate surrounding area to be accessible and therefore, these form a material consideration in determining the application. Those permissions are:

Application Number	Description	Location
20/01000/OUT	Replacement of a commercial building with up to three dwellings	Building At The Old Dairy Broad Street Green Road Great Totham Essex (east of the application site)
20/00043/FUL	Proposed two bed dwelling	Land Adjacent 1 Poplar Grove Chase Great Totham Essex (towards the southeast of the appeal site)

- 5.1.12 Given the abovementioned permissions are more recent than the appeal decisions at the site and having regard to their proximity to the application site, it would not be considered reasonable to reach a different conclusion in relation to accessibility. Therefore, as it was found as part of the abovementioned applications that there was suitable access to public transport and thus services and facilities it is considered that the site is accessible. However, accessibility is not the only aspect of sustainability and the environmental and social aspects of sustainability also need to be considered. This will be addressed in the sections below.

5.2 Housing Need and Supply

- 5.2.1 Recent case law, as noted above and having regard to S38 (6), restates the primacy of the statutory development plan as the starting point in the determination of planning applications. However, in respect of the Council's current land supply position, the NPPF states that LPAs should consider applications for new dwellings in the context of the presumption in favour of sustainable development, and the LDP policies in relation to the supply of housing should not be considered to be up-to-date. As a result, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole, or specific policies in the NPPF indicate that development should be restricted.
- 5.2.2 Whilst the LDP carries limited weight at present due to the lack of a 5YHLS and consequent impact on its housing delivery policies in particular (including those policies which define settlement boundaries), the NPPF is clear that housing should be provided to meet an identified need.
- 5.2.3 The Local Housing Needs Assessment (2021) (LHNA) is an assessment of housing need for Maldon District, as a whole, as well as sub-areas across the District which are considered alongside the housing market geography in this report. The LHNA is wholly compliant with the latest NPPF and NPPG, and provides the Council with a clear understanding of the local housing need in the District and demographic implications of this, the need for affordable housing, the need for older persons housing, the need for different types, tenures and sizes of housing, the housing need

for specific groups and the need to provide housing for specific housing market segments such as self-build housing.

- 5.2.4 The proposal would comprise one three bedroom dwelling. The LHNA concludes that the District has a need for smaller dwellings, with the biggest requirement being for 3 bed dwellings; specifically, 25-35% 2-beds and 40-50% 3-beds. Therefore, the proposal would meet this policy requirement. Nevertheless, it is considered that the benefits of providing one additional dwelling would make a minimal contribution to the Districts housing need. This minimal benefit will need to be weighed against the harm of the development as discussed in section 5.8.

5.3 Design and Impact on the Character of the Area

- 5.3.1 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.

- 5.3.2 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”.

“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”.

- 5.3.3 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.

- 5.3.4 Similar support for high quality design and the appropriate layout, scale and detailing of development is found within the MDDG (2017).

- 5.3.5 In addition, policy H4 requires all development to be design-led and to seek to optimise the use of land having regard, among others, to the location and the setting of the site, and the existing character and density of the surrounding area. The policy also seeks to promote development which maintains, and where possible enhances, the character and sustainability of the original building and the surrounding area; is of

an appropriate scale and design that makes a positive contribution to the character of the original building and the surrounding area and where possible enhances the sustainability of the original building; and does not involve the loss of any important landscape, heritage features or ecology interests.

- 5.3.6 Although the submitted layout is indicative, given the limited size of the application site, the fact that the site will utilise the existing access and that the dwelling will need to be of a certain size to provide three bedrooms, it is considered unlikely that there is much scope for alteration to the layout as shown.
- 5.3.7 Whilst the application site and the dwelling as shown is of a much smaller scale than the previously refused schemes, as outlined above, the previous Inspectors raised concerns over the fact that the development would not accord to the existing ribbon pattern of development and that it would be visible from public vantage points as well as from the neighbouring residential dwellings. Whilst the dwelling would be less visible from public vantage points, it would still constitute a backland form of development that would have no active frontage with the existing streetscene and would not accord with the linear form of residential dwellings in the surrounding area. Furthermore, the proposed dwelling would still be visible from neighbouring residential dwellings, most notably those along Poplar Grove, as it would be partially screened from the dwellings along Broad Street Green Road by existing vegetation. Therefore, whilst the degree of harm is less than that which was considered as part of the previous dismissed appeals, the development as proposed would still represent an unacceptable form of backland development which fails to conform with the surrounding grain of development. As discussed above it is unlikely that there are many other options of layout to explore at the site and none of which are likely to overcome these matters raised as the development will always be set behind the existing building line.
- 5.3.8 Although it is noted that three dwellings could come forward in the future on the site to the east and these would also be sited behind existing residential dwellings, with no active road frontage, they would still be contained within the existing building line and amongst the existing built form. In contrast a dwelling within the application site would appear as an awkward bolt on to the rear of the site, which cannot be mitigated by the presence of the existing barn building to the north as it is a rural outbuilding and is considered in its own context. The detachment between the application site and the neighbouring site would also be exacerbated by the fact the two sites are separated by an intervening piece of land which is densely vegetated and contains a ditch, thereby further detaching the proposal from the existing built form.
- 5.3.9 Whilst the design of the dwelling as shown when considered in isolation is not objected to due to its traditional form and style, this does not overcome the harm relating the positioning of the proposal discussed above. Furthermore, the addition of a dwelling at the site would result in the urbanisation of the site which would be exacerbated by the loss of vegetation to facilitate an extension to the existing access and also the associated residential paraphernalia which comes with residential living. This refers to outbuildings, boundary treatments, garden furniture etc. Most notable is the provision of parking, which as shown would create a harsh car dominated frontage to the development. Parking to the front of dwellings is resisted under section C 10 of the MDDG. Although this element would not be highly visible from the public realm, the lack of visibility alone does not set aside the requirement for high quality development. Furthermore, there is nothing to ensure that the screening to the north of the site, outside of the site boundary will remain in perpetuity and there would likely be views from the neighbouring development to the east if that site were to come forward in the future.

5.3.10 For the reasons given it is considered that the proposal would result in demonstrable harm to the character and appearance of the area by creating a contrived and awkward form of backland development which would be visible from neighbouring properties. Therefore, the development is considered contrary to policies S1, S8, D1 and H4 of the LDP.

5.3.11 The planning statement suggests that the development proposed is comparable to that approved under application 18/00843/RES at Land Rear of Broad Street Green Road in that it was backland development. However, it is relevant to note that the development subject of 18/00843/RES cannot be considered in the same context as it was not enclosed by ribbon development and fronts an access track.

5.4 Impact on Residential Amenity

5.4.1 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).

5.4.2 The application is outline in nature, with matters relevant to the impact of the development on the neighbouring residential occupiers, such as scale, appearance and layout, being reserved for future consideration. Although it should be noted that if this application were approved there would be little scope for broadscale amendments to the layout as the plot size and shape largely dictates the location of the dwelling and thus the layout of the site. Nevertheless, given that the matters mentioned above are subject to submission and revision, it is not possible to fully assess the impact of the proposal on residential amenity.

5.4.3 Notwithstanding the above, the indicative layout shows that the rear of the dwelling would face south, towards the rear of the properties on the northern side of Poplar Grove Chase. However, as the rear of the application site is located at least 35m from the rear of the properties to the south, it is likely that a back-to-back distance of 25m can be achieved at the site regardless of the layout.

5.4.4 Currently there are no other residential properties surrounding the application site, albeit it is noted that there is outline permission for three dwellings to the east. Whilst the layout of that scheme is not yet known due to it only having outline permission, given the presence of the intervening area of vegetation and distance between the sites (8m) it is likely a layout can be achieved for both developments that do not cause demonstrable harm to neighbouring amenity. Therefore, it is considered that subject to design, scale and specific layout, a dwelling of a similar scale to what has been shown could be accommodated within the site without any significant loss of amenity, overlooking or loss of privacy to neighbouring occupiers or between the proposed dwelling.

5.5 Access, Parking and Highway Safety

5.5.1 Policy T2 aims to create and maintain an accessible environment, requiring development proposals, inter alia, to provide 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.

- 5.5.2 The Council's adopted VPS SPD contains the parking standards which are expressed as minimum standards. This takes into account Government guidance which recognises that car usage will not be reduced by arbitrarily restricting off street parking spaces. Therefore, whilst the Council maintains an emphasis of promoting sustainable modes of transport and widening the choice, it is recognised that the Maldon District is predominantly rural in nature and there is a higher than average car ownership. Therefore, the minimum parking standards seek to reduce the negative impact unplanned on-street parking can have on the townscape and safety, and take into account the availability of public transport and residents' reliance on the car for accessing, employment, everyday services and leisure. The key objectives of the standards is to help create functional developments, whilst maximising opportunities for use of sustainable modes of transport. This will enable people to sustainably and easily carry out their daily travel requirements without an unacceptable detrimental impact on the local road network, or the visual appearance of the development, from excessive and inconsiderate on street parking.
- 5.5.3 The adopted vehicle parking standards state that a three bedroom dwelling should provide two vehicle parking spaces measuring 2.9m x 5.5m.
- 5.5.4 Vehicle parking provision would be dealt with in detail by way of a reserved matters submission if permission were to be granted. However, the illustrative site plan shows that the dwelling would be served by two vehicle parking spaces immediately to the north of the dwelling. Therefore, there is no objection in relating to car parking provision.
- 5.5.5 Whilst access is also a reserved matter, it is noted that it is intended for the development to make use of the existing access. Given that there would only be one additional dwelling served by the access, it is not considered that its use would be over intensified. Furthermore, the Local Highway Authority have been consulted and raise no objection subject to conditions relating to the provision of any gates at the access, the provision of off-street vehicle and cycle parking. If the application were to be approved these conditions would be included. However, given the scale of the development, the distance from the highway and the fact that the access is existing it is not considered reasonable or necessary to impose conditions relating to a residential travel pack, surface materials of the access or the discharge of surface water onto the highway.

5.6 Private Amenity Space and Landscaping

- 5.6.1 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 Essex Design Guide SPD advises a suitable garden size for each type of dwellinghouse, namely 100sqm of private amenity space for dwellings with three or more bedrooms.
- 5.6.2 Private amenity space issues would be dealt with in detail by way of a reserved matters submission, if permission were to be granted. However, the development as shown on the indicative plan could provide a garden space in excess of 100m². Therefore, the development would provide adequate amenity space in accordance with Policy D1.
- 5.6.3 Landscaping would also be dealt with at reserved matters and it would be expected that a full landscaping scheme would be provided.

5.7 Impact on Ecology, Trees and Biodiversity

- 5.7.1 The application has been supported by a Preliminary Ecological Appraisal (Hybrid Ecology November 2021). The ecological appraisal includes precautionary measures for nesting birds and all retained trees and hedgerows. The development would involve the loss of a small section of vegetation to facilitate the access to the dwelling, but it is proposed to be replaced through additional planting. Furthermore, the ecological report states that all retained trees and hedgerows will be protected throughout the development in accordance with British Standard 5837 (2012).
- 5.7.2 Further to the above, it is noted that there is Horse Chestnut adjacent overhanging the eastern boundary of the site, which is not likely to be impacted by the development, particularly as there is already the stable building in place. However, it would need to be demonstrated as part of a reserved matters application that the forthcoming design has considered the tree constraints and that it would be suitably protected during any construction works.
- 5.7.3 In terms of ecological protection, it was found that the site was of limited scale and diversity and that there was no evidence of potential for legally protected species other than nesting birds. Therefore, works will only be carried out between October and February unless a negative nest check has been completed by an ecologist.
- 5.7.4 In terms of net biodiversity gain, in accordance with paragraph 174(d) of the NPPF and Policy N2 of the LDP, it is suggested that a new species-rich hedgerow could be planted along the southern edge of the access road and around the southern edge of the amenity space as shown. The development could also include habitat boxes for nesting birds and roosting bats. Whilst there is no objection to these measures, any forthcoming reserved matters application would also need to demonstrate as part of the landscaping scheme that any soft landscaping will enhance amenity and wildlife benefit.
- 5.7.5 Having regard to the above, subject to conditions to secure the mitigation and enhancement measures proposed there is no objection in relation to ecology, trees and biodiversity.

5.8 European Designated Sites

- 5.8.1 The application site falls within the 'Zone of Influence' (Zol) for one or more of the European designated sites scoped into the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). This means that residential developments could potentially have a significant effect on the sensitive interest features of these coastal European designated sites, through increased recreational pressure etc.
- 5.8.2 The development of one dwelling falls below the scale at which bespoke advice is given from Natural England (NE). To accord with NE's requirements and standard advice an Essex Coast RAMS Habitat Regulation Assessment (HRA) Record has been completed to assess if the development would constitute a 'Likely Significant Effect' (LSE) to a European site in terms of increased recreational disturbance. The findings from the HRA Stage 1: Screening Assessment are listed below:

HRA Stage 1: Screening Assessment – Test 1 - the significance test

Is the development within the zone of influence (Zol) for the Essex Coast RAMS with respect to the below sites? Yes

Does the planning application fall within the following development types? Yes

Proceed to HRA Stage 2: Appropriate Assessment to assess recreational disturbance impacts on the above designated sites

Test 2 – the integrity test

Is the proposal for 100 houses + (or equivalent)? No

Is the proposal within or directly adjacent to one of the above European designated sites? No

- 5.8.3 As the answer is no, it is advised that a proportionate financial contribution should be secured in line with the Essex Coast RAMS requirements. Provided this mitigation is secured, it can be concluded that this planning application will not have an adverse effect on the integrity of the above European sites from recreational disturbance, when considered 'in combination' with other development. NE does not need to be re-consulted on this Appropriate Assessment.
- 5.8.4 The Essex Coastal RAMS document has been adopted. A unilateral undertaking has been submitted with the application which secures the required contribution of £127.30 per dwelling will be provided along with the £30 checking fee which has been paid and the £50 monitoring fee. Therefore, there is no objection in this regard.

5.9 Other Material Considerations

Self-build register

- 5.9.1 The applicants are on the Council's Self-Build and Custom Housebuilding Register which is a material consideration in the determination of this application.
- 5.9.2 The 2015 Act (as amended) states that the Council has 3 years from the end of each base period in which to grant Permission in Principle (PiP) for the number of suitable plots of land for the entries in that base period. The three year time period for base periods one and two have now finished.
- 5.9.3 A review of the self-build register and appropriate sites that reflect the definition of self-build has been undertaken. The following data has been corroborated in this respect:

Summary table of number of individuals on Part 1/Part 2 of the Register:

Base Period	Base period	No. of individuals on Register part 1	No. of individuals on Register part 2
To 30/10/2016	1	1	0
31/10/2016-30/10/2017	2	4	0
31/10/2017-30/10/2018	3	5	0
31/10/2018-30/10/2019	4	0	5
31/10/2019-30/10/2020	5	1	2
31/10/2020-31/10/2021	6	4	2
	total	15	9

Summary table of number of permissions and number of individuals/groups on Part 1 of the Register:

	Base period 1	Base period 2	Base period 3	Base period 4	Base period 5	Base period 6	Total
No. of individuals on Part 1 of Register in each base period after Register review in September 2018	1	4	5	0	1	4	15
No. of groups on Part 1 of Register	0	0	0	0	0	0	0
Total No. entries on Part 1 of Register	1	4	5	0	1	4	15
Self-build permissions granted in each base period (no. dwellings)	0	7	5	6	3	3	24
Sites granted outline permission that would be suitable for self-build (no. dwellings)	2	9	6	6	1	4	28
Total sites granted planning permission (no. dwellings)	2	16	11	12	4	7	52

5.9.4 In all the base periods, the Council has granted the same number of, or more suitable development permissions than there are number of entries on Part 1 of the Register for that base period. Across the base periods there are 15 individuals on Part 1 of the Register. In comparison, 52 planning permissions for, or suitable for, self-build have been granted.

5.9.5 Given the above, this indicates that the Council has met its legal requirement.

5.9.6 Having regard to the guidance issued by the Secretary of State and that contained within the Planning Practice Guidance (PPG) and the above findings, it is considered the Council has met its need in respect of the Self Build Register. Therefore, limited weight is given in this respect in the determination of this application. Further, even if the identified need was not met, the harm identified in terms of impact on the character and appearance of the area would outweigh the benefit.

5.10 Planning Balance and Sustainability

5.10.1 It is important to recognise the balance between the Local Plan policies relevant to the development under consideration and the position of the NPPF in respect of the LDP policies now considered to be out of date due to the lack of a 5YHLS. The tilted balance is engaged in this case and hence the local planning authority must give significant weight to the NPPF and its fundamental position of sustainable development which is the defining purpose of the planning system, as a material consideration.

5.10.2 The key priority within the NPPF, is the provision of sustainable development. This requires any development to be considered against the three dimensions within the definition of 'sustainable development' providing for an economic, social and environmental objective as set out in the NPPF.

- 5.10.3 Notwithstanding the considerations as contained in those paragraph's, it is incumbent on the LPA, where appropriate to consider, as a matter of general planning judgment, the site specific or scheme specific reasons for refusal. However, it does mean that planning applications submitted for land which is unallocated or located outside defined settlement boundaries, as set out in local plan policies, could no longer be refused on those grounds alone.
- 5.10.4 In judging whether a residential scheme should be granted, it is necessary to set out the weight attributed to the planning benefits which the proposal offers in making up the current housing land supply shortfall (with reasons), against the harm identified (if any) arising from the proposed development.
- 5.10.5 With regard to the 3 tests of sustainability, in economic terms, it is reasonable to assume that there may be some support for local trade from the development, and the additional unit may support local businesses within Great Totham and/or Heybridge. This would however be limited given the scale of the proposal relating to one dwelling. Equally, although it is noted that it is intended that the property is constructed as a self-build there is no guarantee that the construction would be undertaken by local businesses, with locally sourced materials. No details are provided within the application to this effect. Any economic benefits would therefore be considered nominal.
- 5.10.6 In social terms the proposal would provide limited benefits to the vitality of the local area due to the limited scale of the development. The application is for one family dwelling and therefore provides limited benefits in terms of the housing supply or mix.
- 5.10.7 In environmental terms, whilst there would be some ecological enhancements proposed, these would be limited, again given the scale of the development. The development would also harm the character and appearance of the rural area as a result of introducing an unacceptable form of backland development.
- 5.10.8 Overall, taking this into account, the development is not considered to be sustainable as the limited benefits do not outweigh the substantial harm outlined within the report above.
- 5.10.9 It is noted that the planning statement relies on the Inspector's decision relating to 20/00043/FUL (Land Adjacent to 1 Poplar Grove Chase), where it was considered that there were limited social and economic benefits of the scheme. However, the Inspector noted that these limited benefits could only be attributed limited weight and found that there were no adverse impacts that would significantly and demonstrably outweigh that limited weight. However, that is not comparable to this application as it was infill development, opposed to backland development and there is a greater degree of harm resulting from this proposal. Therefore, the limited benefits must be weighed against the harm and in this instance the benefits are not considered to outweigh the environmental harm.

6 ANY RELEVANT SITE HISTORY

- **FULF/MAL/91/00293** - Closure of existing vehicular access and formation of new access. Approved: 04.06.1991
- **FUL/MAL/09/00532** - Change of use from Milk Depot to employment and light industrial (B1). Extensions and alterations to existing building. Approved: 17.08.2009
- **HOUSE/MAL/13/00292** - Erection of a timber framed single storey garage. Approved: 18.06.2013
- **COUPA/MAL/14/00554** - Conversion of office to residential units. Refused: 06.08.2014

- **FUL/MAL/15/01200** - Replace existing B1 industrial building with proposed children's day nursery and one dwelling. Refused: 26.01.2016. Appeal dismissed: 11 April 2017 (reference: APP/X1545/W/16/3154913)
- **FUL/MAL/16/00743** – One dwelling. Refused: 25.08.2016. Appeal dismissed: 11 April 2017 (reference: APP/X1545/W/16/3162966)
- **FUL/MAL/16/01231** – Extension to office building to form an attached live/work unit. Refused: 12.07.2017. Appeal dismissed: 11.08.2017
- **FUL/MAL/17/01272** - Extension to office building to form an attached live/work unit. Refused: 07.03.2018. Appeal dismissed 22.07.2019
- **FUL/MAL/18/01191** - Extension to office building to form an attached live/work unit. Refused: 10.01.2019. Appeal dismissed 2.12.2019.
- **FUL/MAL/20/01000/OUT** – Replacement of commercial building with up to three dwellings. Approved 12.01.2021.

7 CONSULTATIONS AND REPRESENTATIONS RECEIVED

7.1 Representations received from Parish / Town Councils

Name of Parish / Town Council	Comment	Officer Response
Great Totham Parish Council	Backland development located outside of the development boundary	Addressed at section 5.3

7.2 Statutory Consultees and Other Organisations

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
Local Highway Authority	No objection subject to conditions	Addressed at section 5.5

7.3 Internal Consultees

Name of Internal Consultee	Comment	Officer Response
Environmental Health	No objection subject to drainage conditions	Noted, conditions should be included if the application were to be approved.
Ecology	No objection subject to conditions and securing a RAMS contribution	Addressed at section 5.7
Tree Consultant	There is a mature Horse Chestnut adjacent to the site that has not been considered in an arboricultural capacity. It is unlikely that the tree will be impacted by the proposal, but its constraints and the protection measures that will be implemented to ensure its protection and	Addressed at section 5.7

Name of Internal Consultee	Comment	Officer Response
	retention need to be provided as part of a detailed application. Soft Landscaping will also be required to show how it will enhance amenity and wildlife benefit, as well as including elements of secure by design where appropriate.	

7.4 Representations received from Interested Parties

7.4.1 No letters of representation have been received to date.

8 REASON FOR REFUSAL

1. The application site lies within a rural location. The proposed development would represent an unacceptable form of backland development that fails to accord with the prevailing pattern of development within the area. The development would be visually prominent from surrounding properties and would result in an unwelcomed visual intrusion and urbanisation of the site, to the detriment of the character and appearance of the surrounding area. The development would therefore be unacceptable and contrary to policies S1, S8, D1 and H4 of the Maldon District Local Development Plan and Government advice contained within the National Planning Policy Framework.



**REPORT of
DIRECTOR OF SERVICE DELIVERY**

to
**NORTH WESTERN AREA PLANNING COMMITTEE
2 FEBRUARY 2022**

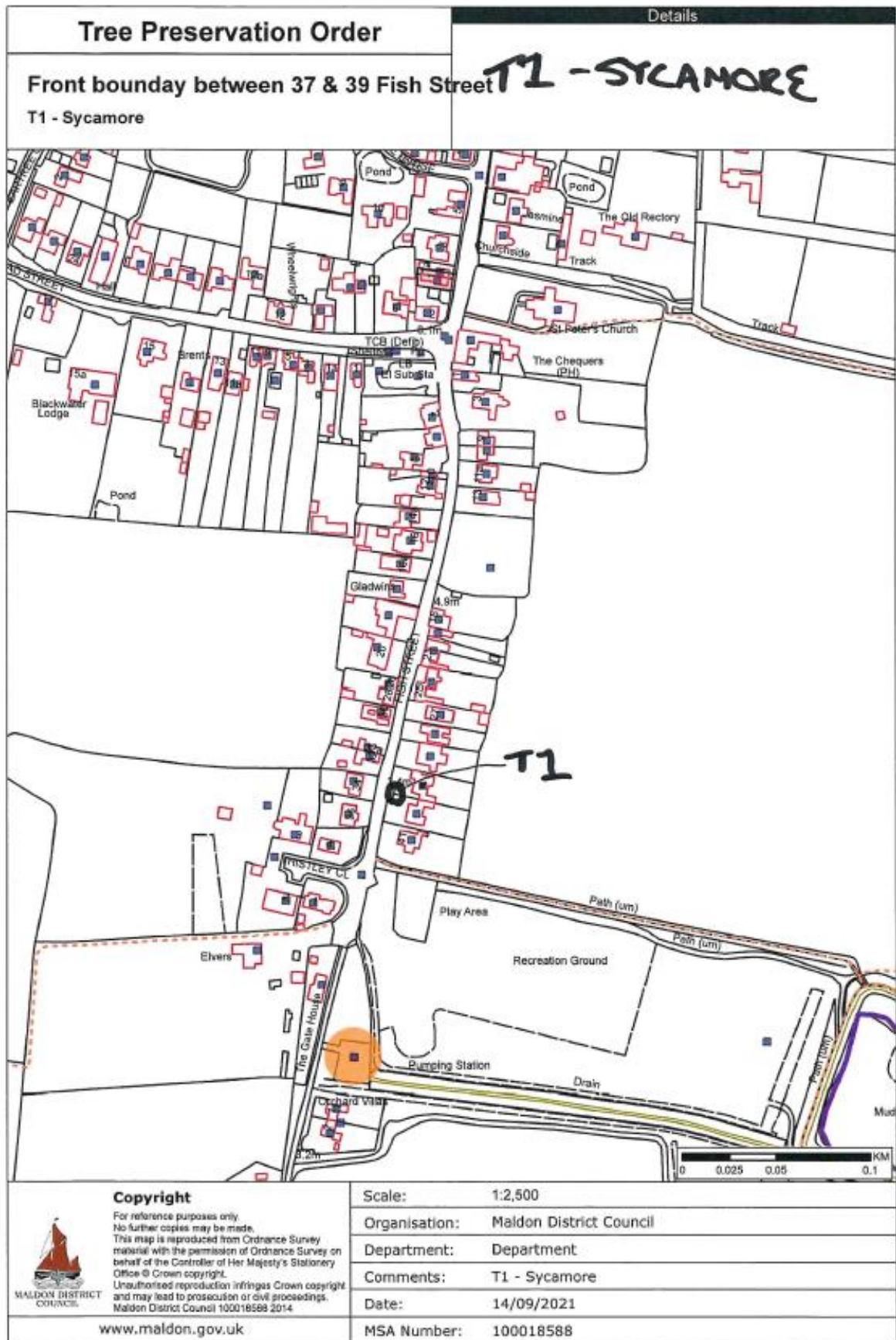
Application Number	TPO 4/21
Location	Front boundary between 37 and 39 Fish Street, Goldhanger, CM9 8AT
Proposal	Confirmation of TPO 4/21
Owner's	Mr & Mrs Button – 37 Fish Street, Goldhanger, CM9 8AT Mr Moore – Oak Cottage, Mill Lane, Pebmarsh, CM9 2NW
Confirmation by	14.03.2022
Case Officer	Sophie Mardon
Parish	GOLDHANGER PARISH COUNCIL
Reason for Referral to the Committee / Council	Decision on confirmation of a Tree Preservation Order as per the Council's scheme of delegation.

1. RECOMMENDATION

CONFIRM Tree Preservation Order (TPO) 4/21 without any modifications

2. SITE MAP

Please see below.



SUMMARY

3.1 Proposal / brief overview, including any relevant background information

- 3.1.1 In August 2021, the Council received a notification under the terms of section 211 of the Town and Country Planning Act 1990, to undertake works to a tree within a Conservation Area. The notification proposed to fell a Sycamore Tree located on the shared front boundary of Nos. 37 and 39 Fish Street, Goldhanger. Due to the prominent location and the size of the tree, and lack of any Arboricultural justification for its removal, it was considered by the Council that the unjustified removal of the tree would materially impact on the amenity of the area. 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 tree 15 out of 25 and concluded that the Sycamore tree was worthy of a Tree Preservation Order (TPO). Therefore, a TPO was served on 14 September 2021.
- 3.1.2 One letter of objection has been received relating to the serving of TPO 4/21 located on the front boundary of Nos. 37 and 39 Fish Street, Goldhanger.
- 3.1.3 The objection remains unresolved; therefore, the question of whether or not to confirm the TPO has been brought before members to determine.

3.2 The site

- 3.2.1 The Sycamore tree is located in the front garden setting, along the shared southern and northern boundary of Nos. 37 and 39 Fish Street, fronting the highway. Due to its location to the front of the dwelling, the size of the tree and the lack of many other substantial trees in the immediate area it is considered that the tree has a significant role within the street scene.
- 3.3 The tree is within the property of No. 37 Fish Street, Goldhanger, which is known to be owned by Mr & Mrs Button and No. 39 Fish Street, which is known to be owned by Mr Moore.

4. MAIN RELEVANT POLICIES

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

4.1 Corporate Plan 2019-2023:

1. Strategic Theme: The Environment - protected and improved environment for residents and visitors. Partnership working to protect our countryside and coastline.

4.2 Relevant Planning Guidance / Documents:

- Planning Practice Guidance (PPG)

4.3 Government Guidelines:

- 4.3.1 Government guidelines advise that: the Local Planning Authority (LPA) is required to take into account all duly made objections and representations before deciding whether to confirm the TPO.

4.3.2 If Members decide to Confirm TPO 4/21, 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.

4.3.3 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 T1 Sycamore is located along the northern and southern front/ side boundary of Nos 37 and 39 Fish Street, Goldhanger. Due to its size and location, it is highly visible within its setting and along the wider streetscene and is considered to hold significant amenity value, adding to the character and appearance of the surrounding area, which is within a Conservation Area.

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.'* As part of the Section 211 notice regarding the felling of the Sycamore tree, the applicant claims that the Sycamore tree has started to crack the resin bonded driveway, pulling up the blocks where it is causing movement and is starting to cause significant damage which could also impact onto the road as the roots go under the road and both driveways. The applicant also stated that repairs to the driveway cannot be undertaken while the tree is still in situ, however, no suitable Arboricultural evidence or further supporting information has been provided to demonstrate that the tree is the cause of the damage, or that no other repair solutions are available to prevent the loss of this significant tree. Therefore, the proposed works under the Section 211 notification were not considered to be suitably evidenced or justified and could be considered to be excessive.

5.3 In the interest of protecting this prominent landscape feature and the amenity value of this tree within the locality, the Sycamore tree was assessed using the 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 Sycamore tree scored satisfactory for the suitability of a TPO for its amenity due to its prominent size and location which is clearly visible within the public realm. The expediency assessment reflected the immediate threat of the tree as mentioned in section 5.2. The Sycamore tree scored an overall total 15 out of 25 which means that the Sycamore tree 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). However, as the enquiry was to fell the Sycamore, it is considered by the

Council that this goes beyond a precautionary threat as the threat to the tree was immediate.

- 5.5 It should be noted that the TPO would not prevent works to the tree from being carried out, however it would control any such works to ensure that they were suitable, justified and did not harm the health of the tree or the amenity value it offers to the surrounding area. Furthermore, TPOs can serve as a useful control by securing and protecting replacement planting which is not an option under a Section 211 notification. It is considered relevant to note that whilst no suitable arboricultural justification to remove the tree has been provided under this application, a subsequent Section 11 application could be submitted with such justification and without a TPO in place, the Local Planning Authority (LPA) would be unable to secure the replacement of such an important landscape feature.

6. ANY RELEVANT SITE HISTORY

05/01206/TCA – Fell two Cypress trees to the front garden as they have grown too large and are reducing light to this and the neighbouring property – Allowed to Proceed – 28.11.2005

14/00795/TCA - T1 Silver Birch - Removal of tree – Allowed to Proceed – 11.09.2014

18/00037/TCA - T1 Blossom - Fell. Replace hedge with Laurels. – Allowed to Proceed – 21.02.2018

21/00829/TCA - T1 Sycamore – Fell – TPO Served – 14.09.2021

7. CONSULTATIONS AND REPRESENTATIONS RECEIVED

7.1 Representations received from Interested Parties

- 7.1.1 1 letter from one owner was received **objecting** to the serving of the TPO 4/21 and the reasons for objection are summarised in the table below:

Objection Comment	Officer Response
The tree is a Sycamore and has been in place for many years given its size without a TPO being connected to it.	Comments noted, due to the nature of the works under the S211 notice it was considered expedient to serve a TPO on the tree to prevent unnecessary and unjustified works. Further addressed in section 5 of the report.
Over the last 3 years the tree has started to lean and is cracking our driveway which is causing significant damage to our property. Branches have fallen in heavy winds that have caused damage to vehicles	Comments noted, no Arboricultural justification or evidence has been submitted to implicate the tree.
The tree is also a possible cause of drainage problems affecting the drain outside No. 39 due to the roots obstruction the underground drains.	Comments noted, no Arboricultural justification or evidence has been submitted to implicate the tree.
Concerns over the harm it could do it people living in Fish Street/ visiting the area of the tree continues to out the ground leaning towards the street and one day collapsing	Comments noted, the applicant has not demonstrated that no other repair solutions are available which could mitigate the impact of the tree.

8. **CONCLUSION**

- 8.1 The Sycamore tree, the subject of the TPO makes a significant contribution to the character and appearance of the surrounding area due to the size and prominent location of the tree. Given that the tree has a TEMPO score of 15, it is considered that the TPO should be confirmed to prevent the loss of this tree without securing appropriate replanting, which could harm the amenity value of the Conservation Area.





**REPORT of
DIRECTOR OF SERVICE DELIVERY**

to
**NORTH WESTERN AREA PLANNING COMMITTEE
2 FEBRUARY 2022**


Application Number	TPO 5/21
Location	Primrose, Howe Green Road, Purleigh, CM3 6PX
Proposal	Confirmation of TPO 5/21
Owner's	John Holliday and Lucy Holliday – Primrose, Howe Green Road, Purleigh, CM3 6PX David Fleming and Jane Fleming – Great Whitmans Farm, Hackmans Lane, Purleigh, CM3 6RW.
Confirmation by	13.04.2022
Case Officer	Sophie Mardon
Parish	PURLEIGH PARISH COUNCIL
Reason for Referral to the Committee / Council	Decision on confirmation of a Tree Preservation Order as per the Council's scheme of delegation

1. RECOMMENDATION

CONFIRM Tree Preservation Order (TPO) 5/21 without any modifications

2. SITE MAP

Please see below.

Tree Preservation Order		Details
Primrose, Howe Green Road, Purleigh TPO 5/21		T1 - OAK
 <p>Copyright For reference purposes only. No further copies may be made. This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Maldon District Council 100018588 2014</p> <p>www.maldon.gov.uk</p>	<p>Scale: 1:2,500</p> <p>Organisation: Maldon District Council</p> <p>Department: Department</p> <p>Comments: T1</p> <p>Date: 13/10/2021</p> <p>MSA Number: 100018588</p>	

3. SUMMARY

3.1 Proposal / brief overview, including any relevant background information

- 3.1.1 In March 2021, the Council received an enquiry from a local resident who had been approached by a tree consultant who cited an Oak tree on the local resident's land as causing structural damage to their client's property at the dwelling known as Primrose, Howe Green Road, Purleigh and that the tree be felled. It was further enquired if the tree was subject to a Tree Preservation Order (TPO) and concerns were raised regarding its protection as the tree is situated within an ancient hedgerow, within 500m of a Scheduled Monument and close to the Purleigh conservation area. Due to its prominent location and the size of the tree, it was considered by the Council that the removal of this tree would materially impact on the amenity of the area. Therefore, a Tree Evaluation Method for Preservation Orders (TEMPO) assessment, which is a nationally accepted system of scoring the amenity value of a tree, was carried out. The TEMPO assessment scored the tree 15 out of 25 and concluded that the Oak tree was worthy of a TPO.
- 3.1.2 An initial TPO 1/21 was served on 16 April 2021 and was subsequently confirmed on 29 September 2021. However, due to an administrative error a letter of objection from the owner of Primrose, Hill House, was not received by the officer. In this instance, as due process was not followed TPO 1/21 was withdrawn and TPO 5/21, the subject of this application, was served on 13 October 2021 to allow for the relevant objections to be considered by the Local Planning Authority (LPA). To date, letters of objection from one member of the public have been received relating to the serving of TPO 5/21 located at Primrose, Howe Green Road, Purleigh.
- 3.1.3 The objection remains unresolved; therefore, the question of whether or not to confirm the TPO has been brought before members to determine.

3.2 The site

- 3.2.1 The Oak tree is located along the eastern rear boundary of the dwelling known as Primrose, Howe Green Road. Whilst it is considered to be in the rear/ side garden setting, due to its age, size, location and lack of many other substantial trees in the immediate area (along this eastern side boundary), it is considered that the tree has a significant role within the wider street scene and is highly visible when travelling in a northerly direction along Howe Green Road.

4. MAIN RELEVANT POLICIES

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

4.1 Corporate Plan 2019-2023:

1. Strategic Themes: The Environment - protected and improved environment for residents and visitors. Partnership working to protect our countryside and coastline.

4.2 Relevant Planning Guidance / Documents:

- Planning Practice Guidance (PPG)

4.3 Government Guidelines:

- 4.3.1 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.
- 4.3.2 If Members decide to Confirm TPO 5/21, 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.
- 4.3.3 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 T1 Oak tree is located along the eastern side/ rear boundary of Primrose, Howe Green Road, Purleigh. Due to its size and location, it is highly visible within its setting and along the wider streetscene and is considered to hold significant amenity value, adding to the character and appearance of the surrounding area.
- 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.'* An enquiry regarding the felling of the Oak tree has been brought to the Council's attention. The tree 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, the tree could have been removed without the permission of Maldon District Council (MDC), which would damage the amenity value that the tree currently offers within the surrounding landscape.
- 5.3 In the interest of protecting this prominent landscape feature and the amenity value of this tree within the locality, the Oak tree was assessed using the 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 Oak tree scored satisfactory for the suitability of a TPO for its amenity value due to its prominent size and location which is clearly visible within the public realm. The expediency assessment reflected the foreseeable threat of the tree as mentioned in section 5.2. The Oak tree scored an overall total 15 out of 25 which means that the decision to serve a TPO is defensible.
- 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). However, as the enquiry was to fell the Oak, it is considered by the Council

that this goes beyond a precautionary threat as the threat to the tree was foreseeable.

- 5.5 It should be noted that the TPO would not prevent works to the tree from being carried out, however it would control any such works to ensure that they were suitable, justified and did not harm the health of the tree or the amenity value the Oak tree offers to the surrounding area. Furthermore, TPOs can serve as a useful control by securing and protecting replacement planting. It is relevant to note that whilst no suitable arboricultural justification to remove the tree has been provided to the LPA, this is not to say that in the near future this would not be able to be provided and without the TPO, the LPA would be unable to secure the replacement of such an important landscape feature.

6. **ANY RELEVANT SITE HISTORY**

15/01264/HOUSE - Demolish existing garage. Fill in swimming pool. Construct new single storey link between house and boathouse. Modernise existing bungalow and convert loft. Proposed 5 bed, 1 bathroom, 2 en-suites and 1 WC. Render existing and replace windows – Approved – 20th January 2016

17/01489/HOUSE - Retrospective application for boundary wall – Refused – 09th March 2018

20/00250/HOUSE - Detached garage with games room and storage within roof space – Approved – 12th June 2020

20/00674/HOUSE - Detached garage with games room and storage within roof space. – Approved – 28th August 2020

7. **CONSULTATIONS AND REPRESENTATIONS RECEIVED**

7.1 **Representations received from Interested Parties**

- 7.1.1 letters from **one** owner were received **objecting** to the serving of the TPO 5/21 and the reasons for objection are summarised as set out in the table below:

Objection Comment	Officer Response
There is an ongoing insurance claim for subsidence which is being caused by one of the Oak trees on our boundary. Surveys have been undertaken by the insurance company and the Oak tree's roots are going under the foundations of our house and have already caused significant damage to our property.	Comments noted, no Arboricultural justification or evidence has been submitted to the LPA to date to implicate the tree.
We would rather the tree was not removed however, we do require our property to be repaired and no further damage to be incurred.	Comments noted, It has not been demonstrated that no other repair solutions are available which could mitigate the alleged impact of the tree.
If a root barrier is introduced as a work around, regular maintenance to the tree will be required to keep it to a size that prevents further damage to our property. A TPO would add to further complications with this matter.	Comments noted, however notwithstanding the comments, as stated above, no repair solutions have been demonstrated which could mitigate the alleged impacts from the tree.
It seems unclear as to who the owner of	This is a civil matter

Objection Comment	Officer Response
the Oak tree is.	
The TPO does not clearly state which of the three oaks on the boundary of our property is being protected. From the map enclosed we would argue that no oak trees fall within the circle drawn.	Comment noted, the Council considers that the TPO map provided with the order is clear and concise.
Whilst we appreciate all the trees on the boundary are Oak trees, they do not constitute a tree with significant amenity value. They are not on a public footpath and we do not understand why the Council would only put a TPO on one and not all of the Oak trees on our boundary.	Comments noted. The amenity value of the tree has been addressed in section 5 of the report. As discussed previously, there was a foreseeable threat to this particular Oak tree which is assessed under the expediency section of the TEMPO assessment. The other Oak trees do add amenity to the area and could be worthy of protection however, to date, no threat to the remaining Oaks have been reported. The Council would only serve a TPO where it is reasonable and expedient to do so.
We feel the tree has been singled out for no obvious reason.	The report scored the Oak tree 15/25 which is 'TPO defensible' and was specifically identified.
The TEMPO report says that the tree does not 'definitely merit a TPO'	The report scored the Oak tree 15/25 which is 'TPO defensible'
The tree is not clearly visible to the public if the public stay on designated footpaths	Comments noted. The amenity value of the tree has been addressed in section 5 of the report.
It is our understanding that the Council have to be able to demonstrate why the tree has significant amenity value	Comments noted. The Council has undertaken a TEMPO assessment (Tree Evaluation Method for Preservation Orders), which is a nationally accepted system of scoring the amenity value of a tree and has been made available to the customer.

8. **CONCLUSION**

- 8.1 The Oak tree, the subject of the TPO makes a significant contribution to the character and appearance of the surrounding area due to its size and prominent position. Given that the tree has a TEMPO score of 15, it is considered that the TPO should be confirmed to prevent the loss of this tree without securing appropriate replanting or to prevent inappropriate works being carried out which could harm the amenity value and overall health of the tree.

