

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

DIRECTOR OF STRATEGY,
PERFORMANCE AND
GOVERNANCE
Paul Dodson

10 May 2022

Dear Councillor

You are summoned to attend the meeting of the;

NORTH WESTERN AREA PLANNING COMMITTEE

on **WEDNESDAY 18 MAY 2022 at 7.30 pm**

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

Please Note: All meetings will continue to be live streamed on the [Council's YouTube channel](#) for those wishing to observe remotely. Public participants wishing to speak remotely at a meeting can continue to do so via Microsoft Teams.

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:

COUNCILLORS

M F L Durham, CC
Mrs J L Fleming, CC
S J N Morgan
C P Morley
R H Siddall
E L Stephens
S White





AGENDA
NORTH WESTERN AREA PLANNING COMMITTEE
WEDNESDAY 18 MAY 2022

1. **Chairman's notices**

2. **Apologies for Absence**

3. **Minutes of the last meeting** (Pages 7 - 10)

To confirm the Minutes of the meeting of the Committee held on 30 March 2022, (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. **21/01208/FUL - Birchwood Farm, Birchwood Road, Cock Clarks, Essex, CM3 6RF**
(Pages 11 - 26)

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

6. **21/01253/FUL - Walden Cottage, 58 Walden House Road, Great Totham, Essex, CM9 8PN** (Pages 27 - 36)

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

7. **22/00414/FUL - Jechs Barn, Crouchmans Farm Road, Ulting, Essex, CM9 6QT**
(Pages 37 - 46)

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

8. **22/00048/MLA - Land Opposite 34, Hall Road, Great Totham, Essex** (Pages 47 - 54)

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

9. **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 Nos.5-7.
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

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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
30 MARCH 2022**

PRESENT

Chairman	Councillor Mrs M E Thompson
Vice-Chairman	Councillor J V Keyes
Councillors	M F L Durham, CC, Mrs J L Fleming, CC, S J N Morgan, C P Morley, E L Stephens and S White

598. CHAIRMAN'S NOTICES

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

599. APOLOGIES FOR ABSENCE

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

600. MINUTES OF THE LAST MEETING

RESOLVED (by assent) that the Minutes of the meeting of the Committee held on 2 February 2022 be approved and confirmed.

601. DISCLOSURE OF INTEREST

Councillor M F L Durham disclosed a non-pecuniary interest as a Member of Essex County Council who were statutory consultees in relation to things like highways etc.

Councillor Mrs E L Fleming disclosed a non-pecuniary interest as a Member of Essex County Council who were consultees.

602. 21/00702/FUL - LAND NORTH OF 48 WOODROLFE ROAD, TOLLESBURY, ESSEX

Application Number	21/00702/FUL
Location	Land North Of 48 Woodrolfe Road, Tollesbury, Essex
Proposal	Create residential specialist neighbourhood for older people, consisting of 29 affordable dwellings and community hub building, with associated landscaping and infrastructure.
Applicant	Mr Rob Scott - Lewis & Scott Retirement Living Ltd
Agent	N/A
Target Decision Date	01.04.2022
Case Officer	Anna Tastsoglou
Parish	TOLLESBURY EAST
Reason for Referral to the Committee / Council	Major Application

It was noted that a detailed Members' Update had been circulated prior to the meeting providing further information and clarification from the Officer and advising of additional representation that had been received from interested parties. In her presentation the Officer advised that since the Members' Update had been issued a further four letters of support had been received but that they did not raise any new points of consideration from those already submitted and addressed by Officers. Members were advised that the applicant had submitted a letter requesting that consideration of this application be deferred to the next meeting of the Committee to allow amendments to be made.

Following the Officers' presentation Mr Hope a supporter, Mr Plater representing Tollesbury Parish Council and Ms Tidswell the Applicant addressed the Committee.

In response to a request from the Chairman, the Lead Specialist Place provided detailed information regarding the request to defer by the applicant. Officers' felt it was unclear and there was little evidence to show what would significantly change if determination of this application was deferred and amendments sought. The Officer highlighted how the Local Planning Authority considered there was harm in relation to the character and appearance of the area as set out in the Officer's report and this significantly outweighed the benefits of the proposed development. It was noted that the principle of affordable housing provision was not being objected to.

A lengthy debate ensued and in response to a number of questions raised by Members Officers provided further information on the following:

- Housing and affordable housing provision as part of the proposed scheme and the Council's Local Housing Needs Assessment requirements of such type of developments particularly in respect of affordable / market properties.
- Income and equity caps in respect of affordable housing and discount sales and whether this met the needs of those that cannot access market housing and could result in properties being aimed at those outside of the District.
- Consideration of the Council's lack of Five-Year Housing Land Supply and consideration of the tilted balance in respect of the proposed development.
- Proposed parking provision and security of homes as part of the scheme.
- Flooding and surface water concerns, including the consultation responses from the Environment Agency, Lead Local Flood Authority and Environmental Health.

- Details of a Section 106 agreement and its terms including those proposed by the applicant which should Members be mindful to approve of the application would be sought through delegation to Officers.
- Highways matters, including extension to footpaths proposed as part of the scheme.

Councillor J V Keyes proposed that the application be approved, contrary to Officers' recommendation. The Chairman advised that reasons for approval to address the reasons for refusal were required. This proposal was not supported.

Councillor Miss S White proposed that consideration of the application be deferred to allow the Applicant to address some of the concerns raised by Officers in relation to the affordable sales unites and any other matters. She suggested that the application be deferred for a month. This proposal was duly seconded and upon a vote being taken was agreed.

RESOLVED that this application be **DEFERRED** for one month pending receipt of further information from the applicant.

There being no further items of business the Chairman closed the meeting at 8.30 pm.

MRS M E THOMPSON
CHAIRMAN

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**REPORT of
DIRECTOR OF SERVICE DELIVERY**

to
NORTH WESTERN AREA PLANNING COMMITTEE
18 MAY 2022

Application Number	21/01208/FUL
Location	Birchwood Farm, Birchwood Road, Cock Clarks, Essex, CM3 6RF
Proposal	Proposal for the erection of a new storage building for specialist packaging and equipment for Maldon Oyster Company
Applicant	Mr and Mrs Means – Maldon Oyster Company
Agent	Mrs Elizabeth Milne – Whirledge and Nott
Target Decision Date	15.04.2022
Case Officer	Kathryn Mathews
Parish	PURLEIGH
Reason for Referral to the Committee / Council	Departure from the Local Development Plan

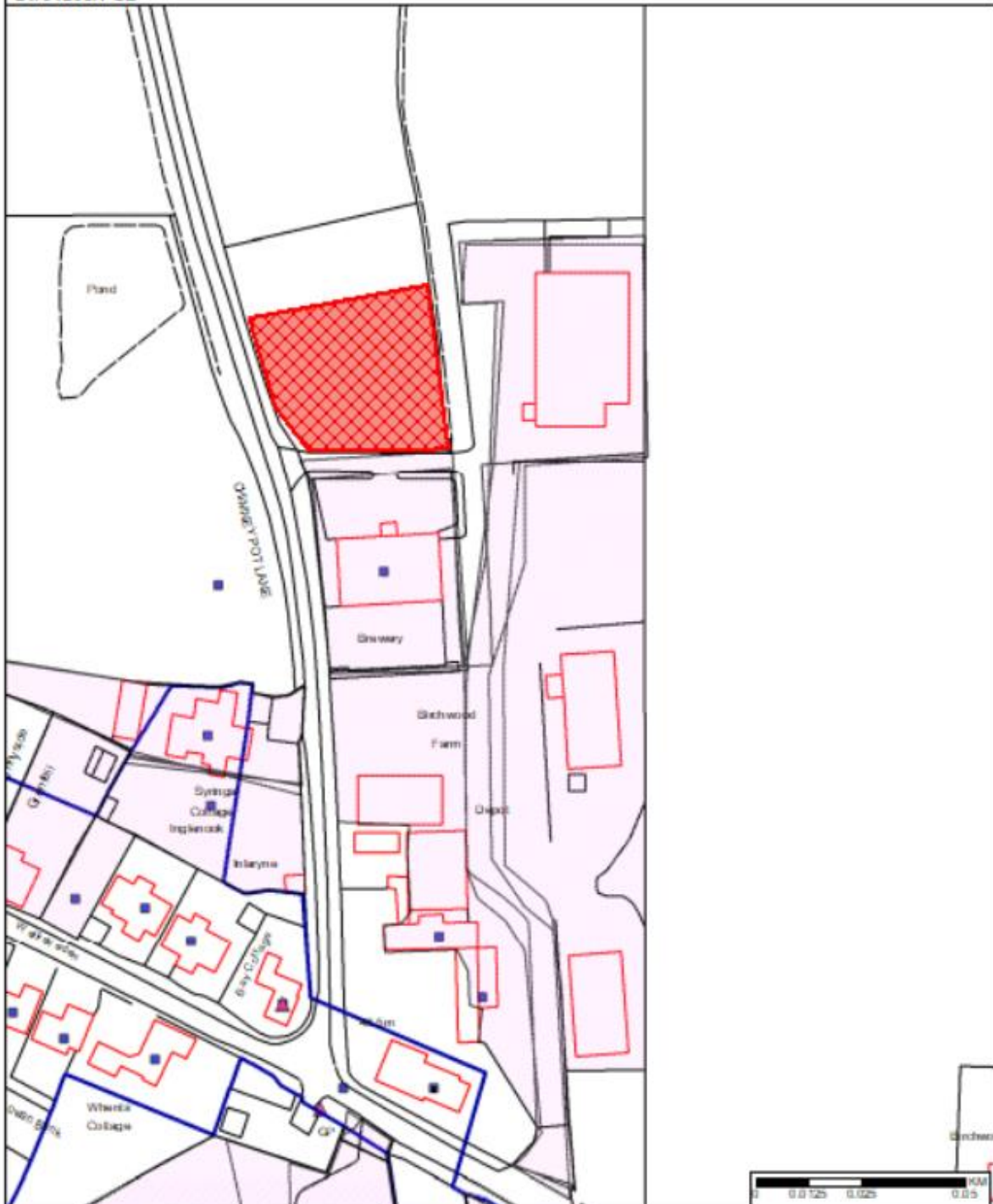
1. RECOMMENDATION


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

2. SITE MAP

Please see below.

Birchwood Farm, Birchwood Road, Cock Clarks
21/01208/FUL



 <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). Unauthorized reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Maldon District Council 100018588 2014</p> <p>www.maldon.gov.uk</p>	Scale: 1:1,250
	Organisation: Maldon District Council
	Department: Department
	Comments: North Western Area
	Date: 29/04/2022
	MSA Number: 100018588

3. SUMMARY

3.1 Proposal / brief overview, including any relevant background information

- 3.1.1 The application site relates to a piece of land located to the east side of Chimney Pot Lane, outside and approximately 60 metres to the north-east of the defined settlement boundary of Cock Clarks village. The land is currently laid to grass and can be accessed from Birchwood Road to the south, through Birchwood Farm. The northern boundary of the site adjoins an agricultural field. The site is relatively flat and is partly enclosed by hedging and trees.
- 3.1.2 To the south of the site is Birchwood Farm, the use of the majority of which was certified in 2003 and 2017 as being lawful for Class B2 (general industrial) uses (references 03/00035/LDP and 17/01056/LDP). There are also other existing buildings associated with Birchwood Farm on neighbouring land permitted for use as part of Maldon Oyster Company as well as for light industrial and office uses.
- 3.1.3 To the south of Birchwood Farm, on the opposite side of Birchwood Road, and to the west beyond Chimney Pot Lane, are residential properties. The nearest dwelling, 'Syringa', is located around 50m to the south west of the application site.
- 3.1.4 Planning permission is sought for the construction of a new building described as being for the storage of specialist packaging and equipment for the Maldon Oyster Company. The steel portal frame building would measure 34.4m x 15.97m, accommodate 360sq.m. of floorspace, have a ridge height of 6.6m and an eaves height 5.5m. The walls and roof of the building would be clad with Merlin grey metal sheeting and there would be a roller shutter door in north and east elevations. The applicant's agent states that the design of the building is the same as the existing buildings. The new building would be accessed from Birchwood Road via the existing access through Birchwood Farm.
- 3.1.5 The agent states that there would no change to parking provision, operating hours, or employment at the site and that there would be no increase in traffic to/from the site as the Maldon Oyster Company is already operating from the site. They are of the view that it would not be reasonable or practical to locate the building in an existing town, village or employment area. The site is described as being part of an existing 'agricultural grazing paddock' consisting of improved grassland which is grazed and cut for hay. It is stated that there would be enhanced landscaping to the northern boundary of the site to minimise the visual impact of the development.
- 3.1.6 As part of the application, it is stated that the Maldon Oyster Company manages 3,500 acres of river bed in the Blackwater which is one of very few shellfish growing waters in the UK, that the business employs 11 people and that the business is registered as aquaculture with Cefas (Centre for Environment, Fisheries and Aquaculture Science) and Maldon District Council.

3.2 Conclusion

- 3.2.1 It is considered that the proposed development would benefit the rural economy, whilst the development is not anticipated to directly create any additional employment, it would support the existing Maldon Oyster Company which makes a positive contribution to the District's economy including tourism.
- 3.2.2 The proposed development would have a negative visual impact as it would have a degree of adverse impact on the rural character and appearance of the site. However, in the context of the existing development within the vicinity of the site, it is

considered that this impact would not be significant, especially if additional landscaping is provided.

- 3.2.3 The proposal would be served by adequate parking and access and would not have an adverse impact on ecological interests or the amenity of local residents.
- 3.2.4 Having assessed the development proposed, it is considered that the economic benefits of the proposed outweigh the limited adverse visual impacts and, therefore, it is recommended that planning permission is granted.

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
- 81-85 Building a strong, competitive economy
- 104-109 Promoting sustainable transport
- 119-123 Making effective use of land
- 124-125 Achieving appropriate densities
- 126-135 Achieving well-designed places
- 152-173 Meeting the challenge of climate change, flooding and coastal change
- 174-188 Conserving and enhancing the natural environment
- 189-208 Conserving and enhancing the historic environment

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

- Policy S1 Sustainable Development
- Policy S7 Prosperous Rural Community
- Policy S8 Settlement Boundaries and the Countryside
- Policy D1 Design Quality and Built Environment
- Policy D2 Climate Change & Environmental Impact of New Development
- Policy D5 Flood Risk and Coastal Management
- Policy E1 Employment
- Policy E4 Agricultural and Rural Diversification
- Policy E5 Tourism
- Policy N2 Natural Environment and Biodiversity
- Policy T1 Sustainable Transport
- Policy T2 Accessibility

4.3 Relevant Planning Guidance / Documents:

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

5. **MAIN CONSIDERATIONS**

- 5.1 The main issues which require consideration as part of the determination of this application are the principle of the development, the impact of the development on the character and appearance of the area and an assessment of the proposal in relation to nature conservation, drainage, and highway safety/access/parking. An assessment of the impact of the development on local residents would also be required.

5.2 Principle of Development

- 5.2.1 Policy S8 of the Local Development Plan (LDP) defines the settlements of the Maldon District within which residential development is to be generally directed. The policy goes on to state that the countryside will be protected for its landscape, natural resources and ecological value as well as its intrinsic character and beauty. Outside the defined settlement boundaries, the Garden Suburbs and the Strategic Allocations, planning permission for development will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon and provided that the development falls within one of thirteen categories (a-m). This list of acceptable development includes criterion (b) 'Employment generating proposals (in accordance with Policy E1)'.
- 5.2.2 Policy E1 of the LDP states that '*New proposals for employment uses will generally be directed to the designated employment areas prior to considering other sites within the District*'. The application is located outside the designated employment areas as listed under this Policy, but the Policy goes on to state that '*new provision for high quality employment space or the expansion of existing employment areas will be considered favourably subject to design, environment, and infrastructure considerations*'.
- 5.2.3 In support of the development proposed, the applicant's agent provides the following information:
- There has been an increased demand for shellfish due to Brexit and the Covid-19 pandemic which have reduced imports.
 - The specialist wooden oyster boxes used are only available from France and need to be stored in a food grade environment. As a result of supply issues, the applicant now orders these boxes six months in advance and needs to have a minimum of 3-6 month's supply in storage.
 - There is also an issue with the supply of bags used to cultivate the oysters which also come from the EU; due to specialist equipment there are no suppliers in the UK.
 - As a result, the storage capacity required has more than doubled in the last 18 months. This, along with the doubling of production, has resulted in the company outgrowing the existing facilities and business continuity being put at risk.

- 5.2.4 As set out above, policy E1 directs employment development towards allocated sites within the Maldon District. However, the development proposed would support an existing business which operates at Birchwood Farm. Local and national planning policies emphasise the importance of supporting local business and these factors should be given weight in the assessment of the proposal. It is accepted that the need for storage has grown recently and that an appropriate building, that meets the necessary standards, is reasonably required. The proposed building is ancillary to the use of the existing business on site, and it is not considered reasonable or appropriate for an existing commercial enterprise to 'split' their site in operation terms, for practical reasons, when it relates to such an intrinsic part of the process. Therefore, whilst the proposal conflicts with the Policy position it is considered that there is adequate justification for the additional building proposed that it is a material consideration of such weight to outweigh the policy conflict in this instance. However, taking into account the specific reasoning for the development and the weight attributed to this in the planning balancing exercise it is considered necessary and reasonable to limit the use of the building to storage associated with the existing use of the neighbouring property by the Maldon Oyster Company, as was the case with the previous planning permissions for development at Birchwood Farm associated with the Company.

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 Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people".

"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".

- 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 The application site lies outside of any defined development boundary. According to policies S1 and S8 of the LDP, the countryside will be protected for its landscape, natural resources, and ecological value as well as its intrinsic character and beauty. The policies stipulate that outside the defined settlement boundaries, the Garden Suburbs and the Strategic Allocations, planning permission for development will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon and provided the development is for proposals that are in compliance with policies within the LDP, neighbourhood plans and other local planning guidance.
- 5.3.6 The application site is currently undeveloped, grassed land that is partly enclosed by hedges. The site is within a rural location, outside the settlement boundary of Cock Clarks.
- 5.3.7 It is considered that the development of this site would appear as an extension of the existing development at Birchwood Farm which is located to the east and south of the application site. The building proposed would be smaller and a lower height than that immediately to the east of the site (reference 19/00674/FUL) (which accommodates 20 purification tanks) and measures 12m x 24m and 7m in height. The building proposed would also be of a design and external appearance comparable to the buildings which exist in the vicinity of the site. The building would also be located towards the south-eastern corner of the field/paddock and adjacent to the site's eastern boundary. Furthermore, the site is partly enclosed by existing hedges and additional landscaping could be required by condition if planning permission were to be granted. Screen planting is indicatively shown on the submitted block plan and it is considered that this will help to mitigate the visual impact of the proposed development.
- 5.3.8 Based on the above, whilst the proposed development would have an impact on the character and appearance of the undeveloped grassland, it is considered that the development would not have a materially adverse impact on the character or appearance of the rural area, to such a degree, as to justify planning permission being refused, particularly taking into account the need for the development specifically on this site, due to conflict with policies S8 and D1 of the LDP.

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 building would be located on the edge of the village settlement boundary of Cock Clarks, to the north of Birchwood Farm which is used for a variety of purposes including those falling within Use Class B2. This provides a level of background noise and disturbance that is considered to be relevant to the assessment of the current application.
- 5.4.3 The building proposed would be located approximately 50 metres from the closest neighbouring dwelling and therefore, despite its scale and visual impact, the development would not have a harmful impact on the amenity of local residents by reason of dominance, loss of light, loss of privacy or loss of outlook.

- 5.4.4 Whilst the applicant's agent states that the development would not increase the level of activity at the site, it must be noted that the Applicant has stated that the proposal is partially necessary to meet a growth in demand for oysters. Therefore, it is reasonable to conclude that the additional accommodation proposed would have the potential to facilitate an increase in the level of processing of oysters at the site. The Specialist: Environmental Health has raised concerns regarding the intensification of the use of the site. However, given the lawful use of the site and the limited scale of the development proposed, which is ancillary nature, and the use of the building proposed, it is not considered that the development proposed would, on balance, result in a materially greater adverse impact on local residents due to noise or disturbance than the existing use(s) of the site.
- 5.4.5 For these reasons, whilst regard has been had to the concerns that have been raised by a neighbouring resident and the Specialist: Environmental Health, it is considered that the impact of the proposed development would not be such that the application should be refused on the grounds of an adverse impact on neighbouring residents. However, the imposition of conditions as recommended by the Specialist (relating to hours of operation, hours of deliveries and external illumination along with prohibiting outside working and storage as well as the installation of extraction or ventilation equipment) would be necessary. These conditions reflect those which have been imposed on previous planning permissions for new buildings at the site associated with the oyster business.

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 Vehicle Parking Standards (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 are 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 proposed access to the site would be taken from the existing access point from Birchwood Road onto Birchwood Farm and the access track leading through Birchwood Farm would be extended to provide access to the building proposed.

- 5.5.4 Essex County Council (ECC) Highways have raised no objections to the proposal subject to the imposition of a condition requiring that the proposed/any new boundary planting is a minimum of 1m from the highway boundary and any visibility splays.
- 5.5.5 In terms of car parking provision, no additional car parking spaces are proposed. The adopted standard for Class B2 uses is one car parking space per 50sq.m, one cycle parking spaces per 100sq.m. for staff and one cycle parking space per 400sq.m. for visitors which equates to the need to provide eight car parking spaces and five cycle parking spaces.
- 5.5.6 Whilst no additional parking spaces are proposed as part of the current application, the block plan submitted suggests that there are 34no. parking spaces for the existing buildings associated with the oyster business. The floorspace of the three existing buildings granted planning permission for purposes relating to the oyster business totals approximately 1,120sq.m. The building currently proposed would increase this floorspace by 360sq.m. to 1,480sq.m. which would require the provision of at least 30no. parking spaces to comply with the adopted standards. Therefore, the existing parking provision would be sufficient even with the additional floorspace proposed to comply with the adopted standards. No cycle parking spaces were required as part of the previously approved development and no cycle parking spaces are proposed as part of the current application. However, the five cycle parking spaces required to comply with the adopted standards for the additional floorspace could be required by condition if planning permission were to be granted.
- 5.5.7 Based on the above, no objections to the development proposed in relation to highway safety, access and parking provision are raised.

5.6 Nature Conservation

- 5.6.1 Policy S1 includes a requirement to conserve and enhance the natural environment, by providing protection and increasing local biodiversity and geodiversity, and effective management of the District's green infrastructure network.
- 5.6.2 Policy D1 requires that, amongst other things, all development must respect and enhance the character and local context and make a positive contribution in terms of the natural environment particularly in relation to designated and non-designated sites of biodiversity/geodiversity value (criterion f).
- 5.6.3 Policy N2 states that, any development which could have an adverse impact on sites with designated features, priority habitats and/or protected or priority species, either individually or cumulatively, will require an assessment as required by the relevant legislation or national planning guidance. Where any potential adverse effects to the conservation value or biodiversity value of designated sites are identified, the proposal will not normally be permitted.
- 5.6.4 The applicant's agent describes the site as an existing 'agricultural grazing paddock' consisting of improved grassland which is grazed and cut for hay. As a result, they consider that the development would have no adverse impacts on legally protected/priority species and habitats.
- 5.6.5 Essex County Council (ECC) Ecology have raised no objections to the proposal subject to the imposition of conditions to secure biodiversity mitigation and enhancement measures. These conditions could be imposed if planning permission were to be granted.

5.7 Other Material Considerations

- 5.7.1 The Specialist: Environmental Health have recommended the imposition of conditions requiring details of foul and surface water drainage if planning permission were to be granted. It is considered that these drainage issues could be dealt with satisfactorily through the imposition of conditions recommended (Policy D2).

6. ANY RELEVANT SITE HISTORY

- 6.1 There is no relevant planning history on the site where the new building itself is proposed. The below planning history relates to the whole of Birchwood Farm:

- **01/00526/LDE** - Lawful Development Certificate in respect of the use of the yard and buildings for the servicing, repair, modification and renovation of agricultural plant and machinery, lorries, and other vehicles. – Granted
- **01/00808/OUT** - Residential development in lieu of existing industrial land and buildings - Refused
- **01/01175/OUT** - Residential development in lieu of existing industrial land and buildings - Refused
- **02/00243/FUL** - Retention of planning permission MAL/8/82 without compliance with condition 10 (sole benefit R Emans) - Allowed on Appeal
- **02/00243/FUL** - Retention of planning permission MAL/8/82 without compliance with condition 5 (sole benefit R Emans) - Allowed on Appeal
- **03/00035/LDP** - Lawful Development Certificate in respect of the use of the site for B2 (General Industrial) use. - Granted
- **03/00579/FUL** - Proposed building to accommodate an oyster hatchery, nursery, holding, grading, depuration & packing facility, and hardstanding - Approved
- **05/00444/FUL** - New workshop and storage shed for repair of oyster plant and harvesting machinery, storage oyster packaging – Approved
- **17/01056/LDE** - Claim for lawful development certificate for existing continued B2 general industrial use. - Approved
- **18/00966/FUL** - Erection of building with associated parking and access to be used as a brewery for Maldon Brewing Company - Approved
- **19/00154/FUL** - Erection of building for oyster purification and ancillary aquaculture storage - Withdrawn
- **19/00674/FUL** – Erection of building for oyster purification and ancillary aquaculture storage by the Maldon Oyster Company – Approved
- **20/00555/NMA** - Application for non-material amendment to approved planning permission 19/00674/FUL (Erection of building for oyster purification and ancillary aquaculture storage by the Maldon Oyster Company.) Amendment sought: Minor amendment to materials, windows, internal layout and added a porch - Approved
- **20/00556/FUL** - Enlarging existing pond by a maximum of 320m² to allow for additional surface water storage (associated with approved permissions 19/00215/FUL and 19/00674/FUL) - Approved
- **20/05068/DET** - Notification 19/00674/FUL (Erection of building for oyster purification and ancillary aquaculture storage by the Maldon Oyster Company.)

Condition 4 - Boundary treatments. Condition 5 - Hard & soft landscape - Condition 9 - Extraction or ventilation equipment. Condition 10 - Foul drainage scheme. Condition 11 - Surface water drainage scheme. Condition 12 - Refuse storage. Condition - Illumination of the site. Condition 14 - Sound insulation - Approved

- **20/01134/FUL** – Change of use of building erected under FUL/MAL/18/00966 from use as a brewery for Maldon Brewing Company to light industrial and office use. Approved
- **21/05088/DET** - Notification 20/01134/FUL (Change of use of building erected under FUL/MAL/18/00966 from use as a brewery for Maldon Brewing Company to light industrial and office use) Condition 3 - Boundary treatment. Condition 4 - Soft landscape works. Condition 11 - Foul drainage scheme. Condition 12 - Water drainage scheme. Condition 13 - Refuse storage. Condition 14 - External illuminations. Condition 17 - Cycle parking - Approved

7. **CONSULTATIONS AND REPRESENTATIONS RECEIVED**

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

Name of Parish / Town Council	Comment	Officer Response
Purleigh Parish Council	Complies with planning legislation and does not conflict with the LDP, provided that all the buildings on the premises are being used for oyster production. Concern that the enterprise may be outgrowing this very rural site.	Noted.

7.2 **Statutory Consultees and Other Organisations**

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
ECC Ecology	No objection subject to securing biodiversity mitigation and enhancement measures.	Noted – refer to section 5.6 of report.
ECC Highways	No objections subject to the imposition of a condition requiring that the proposed/any new boundary planting is a minimum of 1m from the highway boundary and any visibility splay.	Noted – refer to section 5.5 of report.
ECC SuDS Team	Development does not pose a significant flood risk and so has no comment.	Noted.

7.3 Internal Consultees

Name of Internal Consultee	Comment	Officer Response
Specialist: Environmental Health	Have previously raised concerns about intensification of this site, which is in a quiet, rural village location. However, conditions are recommended if planning permission were to be granted relating to surface water drainage, foul drainage, hours of operation, hours of deliveries, no outside working or storage, no extraction or ventilation equipment and external illumination.	Noted – refer to sections 5.4 and 5.7 of report.

7.4 Representations received from Interested Parties

- 7.4.1 **One** letter was received **objecting** to the application and the reasons for objection are summarised as set out in the table below:

Objection Comment	Officer Response
Would cause significant problems while under construction and once in operation as storage. Due to position and previous developments, the whole rural aspect is being removed and replaced with large industrial units – piecemeal - turning the site into an industrial estate – entirely inappropriate in a small hamlet of Cock Clarks and inconsistent with refusal of planning permission for a single dwelling on Chimney Pot Lane (19/00574/FUL).	Noted – refer to sections 5.2, 5.3 and 5.4 of report. The anticipated problems the development would cause during construction are not specified but, as a result of the scale of the development, its position and the means of access to the site, it is considered that the impact of the construction of the development on the amenity of local residents would not of such a magnitude to warrant a refusal of planning permission.

8. PROPOSED CONDITIONS

- 1 The development hereby permitted shall begin no later than three years from the date of this decision.
REASON: To comply with Section 91(1) of The Town & Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2 The development shall be carried out in accordance with the following approved plans and documents: 18/44/03 Rev A, 18/44/31 Rev A, 18/44/32 Rev A and 18/44/33 Rev A.
REASON: For the avoidance of doubt as to the extent of this permission.
- 3 The external surfaces of the building hereby approved shall be constructed of the materials specified on the approved drawings.

- REASON: To ensure the development is visually in keeping with the existing buildings within the vicinity of the site, in accordance with Policies S8, E1 and D1 of the Maldon District Local Development Plan and the NPPF.
- 4 Details of the siting, height, design, and materials of the treatment of all boundaries including the retention of existing hedges, gates, fences, walls, railings and piers shall be submitted to and approved in writing by the local planning authority prior to the first use/occupation of the development hereby approved. The screening as approved shall be constructed prior to the first use/occupation of the development and be retained as such thereafter.
REASON: To ensure the development is appropriate in the rural area in accordance with Policies S8, E1 and D1 of the Maldon District Local Development Plan and the NPPF.
- 5 No development above slab level shall take place until details of all hard and soft landscape works and means of protecting the existing hedges at the site that are to be retained during the course of development have been submitted to and approved in writing by the local planning authority.
- The soft landscape works shall be carried out as approved within the first available planting season (October to March inclusive) following the occupation of any part of the development 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.
REASON: In the interests of the character and appearance of the rural area and highway safety, in accordance with Policies T2, D1, E1 and S8 of the Maldon District Local Development Plan and the NPPF.
- 6 The use hereby permitted along with deliveries to and collections from the site shall only be undertaken between 07:30 hours and 18:00 hours on Mondays to Fridays, and between 08:00 hours and 13:00 hours on Saturdays and not at any time on Sundays and public Holidays.
REASON: To protect the amenity of local residents, in accordance with Policies D1 and D2 of the Maldon District Local Development Plan and the NPPF.
- 7 No machinery shall be operated, and no process shall be undertaken outside of the building. Furthermore, no goods, materials, plant, machinery, skips, containers, packaging, or other similar items shall be stored or kept outside of the building.
REASON: In order to ensure the appropriate use of the site and to protect the amenities of local residents in accordance with Policies D1 and D2 of the Maldon District Local Development Plan and the NPPF.
- 8 No external plant or machinery shall be used unless and until details of the equipment has been submitted to and approved by the local planning authority. Any measures required by the local planning authority to reduce noise from the plant or equipment shall be completed prior to the plant being brought into use and retained as such thereafter.
REASON: In order to ensure the appropriate use of the site and to protect the amenities of local residents, in accordance with Policies D1 and D2 of the Maldon District Local Development Plan and the NPPF.

- 9 No extraction or ventilation equipment shall be installed or fitted to any part of the building except in accordance with a scheme to be submitted to and approved in writing by the local planning authority. The scheme as approved shall be installed and retained as such thereafter.
REASON: In order to ensure the appropriate use of the site and to protect the amenities of local residents, in accordance with Policies D1 and D2 of the Maldon District Local Development Plan and the NPPF.
- 10 No works above ground level shall occur until details of the foul drainage scheme to serve the development have been submitted to and agreed in writing by the local planning authority. The agreed scheme shall be implemented prior to the first occupation of the development.
REASON: To ensure that appropriate foul water drainage is available on site in accordance with Policy D2 of the Maldon District Local Development Plan and the NPPF.
- 11 No works above ground level shall occur until details of the surface water drainage scheme to serve the development have been 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)
- 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 it will be necessary to provide written confirmation from the statutory undertaker that the discharge will be accepted.
REASON: To ensure that appropriate surface water drainage is provided, in accordance with Policy D5 of the Maldon District Local Development Plan and the NPPF.
- 12 No works above ground level shall occur until details of all external illumination of the site including the luminance and spread of light and the design and specification of the light fittings have been 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 thereafter.
REASON: To protect the character and appearance of the rural area and the amenity of local residents, in accordance with Policies D1, E1, S8 and D2 of the Maldon District Local Development Plan and the NPPF.
- 13 Prior to the first use/occupation of the development hereby approved, cycle parking for at least five (5) bicycles shall be provided in accordance with details which shall have been submitted to and approved in writing by the local planning authority. The cycle parking shall be weather-protected and conveniently located for staff and visitors. The cycle parking shall be retained as approved in perpetuity.

REASON: In order to encourage the use of non-motorised means of transport, in accordance with Policies T1 and T2 of the Maldon District Local Development Plan.

- 14 The development hereby approved shall only be used for storage ancillary to the use of Birchwood Farm for oyster processing. Notwithstanding the provision of the Town and Country Planning (General Permitted Development) Order 2015, the building shall be used for no other purpose.

REASON: To clarify the terms of the permission, as the development is approved due to the specific needs of the existing business, to protect the amenities of local residents and in the interests of the character and appearance of the area, in accordance with policies S8, E1, D1 and D2 of the Maldon District Local Development Plan and the NPPF.

- 15 No development shall take place until a Biodiversity Mitigation Method Statement for protected and Priority species, including Great Crested Newts, hedgehogs, and toads, has been submitted to and approved in writing by the local planning authority. The statement shall include the following:

- a) Purposes and objectives for the proposed works
- b) Detailed design(s) and/or working method(s) necessary to achieve stated objectives (including, where relevant, type and source of materials to be used)
- c) Extent and location of proposed works shown on appropriate scale maps and plans
- d) Timetable for implementation
- e) Person responsible for implementing the works
- f) Disposal of any wastes arising from works.

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

REASON: To conserve protected and Priority species, in accordance with Policy N2 of the Maldon District Local Development Plan, and allow the local planning authority to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended, s40 of the NERC Act 2006 (Priority habitats & species) and s17 Crime and Disorder Act 1998

- 16 Within three months of the date of this planning permission, a Biodiversity Enhancement Strategy for Protected and Priority species shall be submitted to and approved in writing by the local planning authority. The content of the Strategy shall include the following:

- a) purpose and conservation objectives for the proposed enhancement measures
- b) Detailed designs to achieve stated objectives
- c) Location of proposed enhancement measures by appropriate maps and plans
- d) Persons responsible for implementing the enhancement measures
- e) 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.

REASON: To enhance Protected and Priority Species/habitats, in accordance with Policy N2 of the Maldon District Local Development Plan and allow the local planning authority to discharge its duties under the s40 of the NERC Act 2006 (Priority habitats & species).

INFORMATIVES

1. Should the existence of any contaminated ground or groundwater conditions and/or hazardous soil gases be found that were not previously identified or not considered in a scheme agreed in writing with the Local Planning Authority, the site or part thereof shall be re-assessed and a scheme to bring the site to a suitable condition shall be submitted to and agreed in writing with the Local Planning Authority. A "suitable condition" means one in that represents an acceptable risk to human health, the water environment, property, and ecosystems and scheduled ancient monuments and cannot be determined as contaminated land under Part 2A of the Environmental Protection Act 1990 now or in the future. The work will be undertaken by a competent person in accordance with the Essex Contaminated Land Consortium's Land Contamination Technical Guidance for Applicants and Developers and UK best-practice guidance.
2. The applicant should ensure the control of nuisances during construction works to preserve the amenity of the area and avoid nuisances to neighbours:
 - a) No waste materials should be burnt on the site, instead being removed by licensed waste contractors;
 - b) No dust emissions should leave the boundary of the site;
 - c) Consideration should be taken to restricting the duration of noisy activities and in locating them away from the periphery of the site;
 - d) Hours of works: works should only be undertaken between 0730 hours and 1800 hours on weekdays; between 0800 hours and 1300 hours on Saturdays and not at any time on Sundays and Public Holidays.

If it is known or there is the likelihood that there will be the requirement to work outside of these hours or there will be periods where there will be excessive noise will significantly impact on sensitive receptors Environmental Health at Maldon District Council must be notified prior to the works as soon as is reasonably practicable. The developer is advised to consult nearby sensitive noise premises and may be advised to apply for a Prior Consent under Section 61 of the Control of Pollution Act 1974.

Care must be taken to prevent the pollution of ground and surface waters. This will include during works and the location of any hazardous materials including fuel from vehicles and equipment.

Where any soils that are known to be contaminated are being excavated or exposed a site waste plan must be prepared in order to store treat and dispose of the materials in accordance with the waste duty of care. It is recommended that advice is sought from the Environment Agency on this matter.

Where there is requirement for dewatering the site, the relevant consent must be sought from the Environment Agency.

Where there is a requirement to obstruct or alter watercourses a consent under section 23 of the Land Drainage Act must be obtained from Essex County Council.



**REPORT of
DIRECTOR OF SERVICE DELIVERY**

**to
NORTH WESTERN AREA PLANNING COMMITTEE
18 MAY 2022**

Application Number	21/01253/FUL
Location	Walden Cottage 58 Walden House Road Great Totham CM9 8PN
Proposal	Replacement dwelling with detached garage, landscaping and extension of garden land.
Applicant	Mankelow - Bradley David Developments
Agent	Mr Fred McKennon - CITIGROUP
Target Decision Date	17.02.2022 EOT 01.04.2022
Case Officer	Cris Lancaster
Parish	GREAT TOTHAM
Reason for Referral to the Committee / Council	Member Call In by Councillor J V Keyes Reason: Sustainability and policies S1, H1 and D1

1. RECOMMENDATION

REFUSE for the reason as detailed in Section 8 of this report.

2. SITE MAP

Please see below.

21/01253/FUL
NWAC



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Maldon District Council 100018588 2014

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Scale: 1:1,250

Organisation: Maldon District Council

Department: Department

Comments: Not Set

Date: 09/05/2022

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 northern side of Walden House Road, approximately 50 metres west of the settlement boundary for Great Totham. The site is currently occupied by a single storey detached dwelling located in the south east corner of the site. The site is surrounded by open countryside to the north, two neighbouring dwellings to the east and a brook along the western boundary.
- 3.1.2 Planning permission is sought for a replacement of the existing bungalow with a two storey dwelling with a detached garage and an extension to the residential garden land.
- 3.1.3 The proposed replacement dwelling would be sited to the north west of the position of the existing dwelling and some 11 metres from the public highway. It would measure 284 sqm being 14.7m wide, a maximum of 10m deep, extend 5.3m to eaves and 8.48m to the ridge. The proposed finishing materials are red facing brick walls, slate roof tiles, softwood windows, soffits and fascia's with an oak framed porch with clay roof tiles.
- 3.1.4 The proposed garage would measure 6.6m wide, 6.37m deep and 4.47m to the ridge. It would be sited to the western side of the site towards Catchpole Brook with its flank parallel to but set back and down from the footpath.
- 3.1.5 The proposed extension to the residential garden land relates to an area of open countryside directly to the rear of the site which amounts to 290sqm. This would increase the residential land from 1485sqm to 1775sqm.
- 3.1.6 This application represents a resubmission following the refusal of application 21/00901/FUL which proposed '*Replacement dwelling with detached garage and extension to garden land*'. The application was refused for the following reason:
- 'The proposed replacement dwelling, due to its design, appearance and scale is considered to form a dominant and bulky building, wholly out of keeping with the character of the area. Furthermore, the harm, as a result of the change of use of agricultural land to residential, would result in the unnecessary urbanisation of the open and undeveloped countryside, which currently positively contributes to the rural area in which it is set. The proposal would result in demonstrable visual harm to the site and surrounding area contrary to policies S1, S8, D1 and H4 of the Maldon District Local Development Plan and Government guidance contained in the National Planning Policy Framework'.*
- 3.1.7 The changes when comparing the proposed and previously refused replacement dwellings (21/00901/FUL) are as follows:
- The design and appearance of the proposed dwelling has been altered from a modern Georgian style dwelling with a hipped roof form to a more traditional farmhouse style to dwelling with two front facing gable projections and gable roof form.
 - The overall width has reduced by 0.4m
 - The overall depth has reduced by 1.8m
 - The proposed extension to the garden land has been reduced from 651.9sqm to 290sqm (reduction of 361.9sqm).

- 3.1.8 Further, it is pertinent to note that the site benefits from approved permission 18/00817/FUL which proposed a two storey replacement dwelling at the site, it has been confirmed that the works have commenced and following a site visit it was apparent that groundworks had begun. Therefore, this permission appears to be extant, and the previously approved dwelling provides a fall-back position in the determination of this application.
- 3.1.9 The changes when comparing the proposed and previously approved replacement dwellings (18/00817/FUL) are as follows:
- An additional front facing gable has been added to the front elevation of the proposed dwelling increasing the footprint of the dwelling by 6 sqm.
 - The design and appearance of the proposed dwelling is similar except for the additional front projecting gable.
 - Provision of a double garage in place of open car parking,
 - The garden land proposed to be extended has increased by 361.9sqm. The original approved site area is 1485sqm and is now proposed at 1735sqm. There is no change in site area between this application and refused application 21/00901/FUL

3.2 Conclusion

- 3.2.1 The application follows the approval of 18/00817/FUL, which granted permission for a two-storey replacement dwelling. This is extant by reason of a meaningful start of development. Although, the overall scale of the proposal has increased by a further 6 sqm over the approved scheme, together with a double garage of 42 sqm to the west of the proposed dwelling, the increase overall, is in itself considered acceptable. The substantive change concerns the proposal being of a similar design and scale to the original approval, except an additional front gable has been included which, although would be a prominent feature, is of shallow depth and no further forward than the existing approved gable. These changes are considered to overcome the design concerns raised with the previous refused scheme. However, the change of use of agricultural land to residential garden land would result in the unnecessary urbanisation of the open and undeveloped countryside, which currently positively contributes to the rural area in which it is set. This element of the proposal did not form part of the previously approved 2018 scheme and although reduced in extent from the previous approval, still is of a size and extent that would result in demonstrable visual harm to the site and surrounding area contrary to policies S1, S8, D1 and H4 of the Maldon District Local Development Plan (MDLDP) and Government guidance contained in the National Planning Policy Framework (NPPF).

4. MAIN RELEVANT POLICIES

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

4.1 National Planning Policy Framework (NPPF) 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
- 119 – 125 Making effective use of land
- 126 – 136 Achieving well-designed places
- 152 – 158 Meeting the challenge of climate change, flooding and coastal change

- 174-188 Conserving and enhancing the natural environment
- 189 – 208 Conserving and enhancing the historic environment

4.2 Maldon District Local Development Plan (LDP) approved by the Secretary of State

- S1 Sustainable Development
- S8 Settlement Boundaries and the Countryside
- D2 Climate Change & Environmental Impact of New Development
- D1 Design Quality and Built Environment
- D3 Conservation and Heritage Assets
- D5 Flood Risk and Coastal Management
- H2 Housing Mix
- H4 Effective Use of Land
- N2 Natural Environment and Biodiversity
- T1 Sustainable Transport
- T2 Accessibility
- N2 Natural Environment and Biodiversity

4.3 Relevant Planning Guidance / Documents:

- Maldon District Vehicle Parking Standards Supplementary Planning Document (VPS)
- Maldon District Design Guide SPD (MDDG) (2017)
- Planning Practice Guidance (PPG)

5. MAIN CONSIDERATIONS

5.1 Principle of Development

- 5.1.1 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 Local Development Plan (LDP).

Replacement dwelling

- 5.1.2 The application site lies outside of the defined settlement boundary. However, as the proposal is for a replacement dwelling the principle of a dwelling being located at this site is already established. Policy H4 of the approved MDLDP states that planning permission for the replacement of an existing dwelling with a new dwelling will only be granted if:

- 1) *The residential use of the original dwelling has not been abandoned;*
- 2) *The original dwelling is not a temporary or mobile structure;*
- 3) *The original dwelling is not worthy of retention because of its design and relationship to the surrounding area;*
- 4) *The proposed replacement dwelling is of an appropriate scale to the plot and its setting in the landscape;*
- 5) *The proposed replacement dwelling is of a design appropriate to its setting; and*
- 6) *The proposal will not involve the loss of any important landscape, heritage features or ecology interests.*

- 5.1.3 Having visited the site and having regard to the previous applications it is noted that the residential use of the original dwelling has not been abandoned and that it is not

a temporary or mobile structure, in accordance with criteria 1 and 2. The existing bungalow on site is not considered to have a particularly strong relationship to the neighbouring dwellings or surrounding area by way of its design and is considered to be of limited architectural merit. Therefore, the existing dwelling is not considered to be worthy of retention and does not conflict with criterion 3.

- 5.1.4 The assessment of the proposed dwelling in relation to criteria 4 and 5 is undertaken in detail below. Following the changes now proposed under this application, there are no significant concerns in relation to the design, appearance and overall bulk of the proposed development. However, concern is maintained in relation to the extension of the garden, and the impact it would have on the character and appearance of the site and surrounding area.
- 5.1.5 The proposal would not result in the loss of any heritage features and no important landscape or ecology interest has been recorded on this site, in compliance with criterion 6.

Extension of Residential Garden Land

- 5.1.6 Policy H4 of the LDP states that *'small, unobtrusive extensions of residential curtilages into the surrounding countryside, which will not adversely affect the character and rural amenities of the site and wider countryside, may be approved where the following criteria are met:*
- 1) *The proposal will not involve the loss of any important landscape, heritage features or ecology interests; and*
 - 2) *Provision is made for suitable landscaping to ensure boundary treatments are of an appropriate rural character and appearance.'*
- 5.1.7 The change of use to the land to the north of the existing residential curtilage would have an overall area of 290sqm which is a 361sqm reduction from the refused scheme. The land is currently open and undeveloped countryside. The proposal would result in an increase of the residential land from 1485sqm to 1,775.9sqm.
- 5.1.8 Although reduced from the refused application 21/00901/FUL, the extent of the land proposed to change use is not considered to be small or unobtrusive, particularly considering that the existing curtilage measures 1485sqm. The additional garden land proposed would increase the residential curtilage to 1785sqm by approximately 17% (as confirmed by the applicants Design and Access Statement). The proposal would extend the residential garden land into an open and undeveloped area that contributes to the rural character of the area, contrary to the policy H4 of the LDP. In addition, no justification has been provided for the proposed extension of garden land.
- 5.1.9 Whilst the land is not considered to have any overriding landscape, heritage features or ecology interests' that contribute to the character of the area, given the extent of the land proposed to change use and the intrusion into the undeveloped countryside, the proposal is considered to be contrary to policy H4 of the LDP and as such, the principal of development cannot be established in this instance.
- 5.1.10 The proposed change of use of agricultural land to residential garden land did not form part of the extant application and the principle of this element of the proposal is objected to.

5.2 Design and Impact on the Character of the Area

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

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

“The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people”.

“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”.

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

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

5.2.4 Similar support for high quality design and the appropriate layout, scale and detailing of development is found within the MDDG (2017). The proposal is for a replacement dwelling. Policy H4 seeks to encourage development only if the proposed replacement dwelling is of an appropriate scale and design to the plot and its setting.

5.2.5 The proposed replacement dwelling would be sited to the north west of the position of the existing dwelling. The proposal uses the footprint and design of the extant planning permission (FUL/MAL/18/00817). This application is for a 284/m² two storey Class C3 detached dwelling house and garage. There are some minor changes to the design and layout:

- Front Elevation – Additional symmetrical gable
- L/H Flank – Additional 2 windows to match size and style of accepted design
- R/H Flank – Additional 3 windows to match size and scale of accepted design

The changes result in a 4.4% increase of footprint (284/m² vs 272/m² of the extant scheme).

5.2.6 The replacement two-storey dwelling approved under the terms of application 18/00817/FUL is significantly larger than the existing bungalow currently occupying the site and given that the permission is extant it provides a fall-back position in the

determination of this application. It should be noted that the proposed extension to the residential garden land did not form part of the previously approved permission. The submitted Design and Access Statement suggests that the visual impact will be low, but the proposal is not accompanied by a verified visual landscape appraisal. Notwithstanding this, whilst the change may be limited in terms of public or wider views there is an impact associated with urban features and domestication beyond the existing curtilage, which would be harmful to the character of the area and the proposed development will encroach on and erode open countryside land.

- 5.2.7 It is considered, on balance, that the dwelling in combination with the garage would not form a dominant and out of keeping feature within open and rural landscape when compared to the approved scheme. As noted above, the overall dimensions and siting would be similar to the farmhouse design of the approved scheme.
- 5.2.8 The proposed garage would be sited to the western part of the site near to Catchpole Brook. Its flank wall would be 1.2m from the back edge of the footpath and set down from street level by over 1 metre. Due to its pitched roof facing the street, its ridge would be some 4.4m from the line of the footpath. Given its design, dimensions and orientation and distance from the proposed dwelling, the garage would not appear cramped nor the buildings, taken together, over dominant in the street scene. In this respect, there are no objections to the proposed garage.
- 5.2.9 The proposed change of use of the agricultural land to the rear of the site (north) to residential garden land would result in a loss of 290sqm of open and undeveloped countryside. Views of the subject land are available to members of the public travelling along the public highway in both directions, and the open and undeveloped land contributes to the rural feel of the area. The change of use of the land would result in the unjustified domestication of the land and intrusion into the countryside, significantly adding to the overall visual harm of the proposal.
- 5.2.10 Therefore, given the above assessment it is considered that the amended replacement dwelling is acceptable in terms of its design and appearance and therefore in compliance with D1 of the LDP. However, the extension of the residential garden to the rear of the site, into open countryside, would result in demonstrable harm to the character and appearance of the site and surrounding area contrary to policies S1, S8 and H4 of the LDP.

5.3 Impact on Residential Amenity

- 5.3.1 The basis of policy D1 of the approved LDP seeks to ensure that development will protect the amenity of its surrounding areas taking into account privacy, overlooking, outlook, noise, smell, light, visual impact, pollution, daylight and sunlight. This is supported by section C07 of the MDDG (2017). Similarly, policy D2 of the approved LDP requires all development to minimize all forms of possible pollution including air, land, water, odour, noise and light. Any detrimental impacts and potential risks to the human and natural environment will need to be adequately addressed by appropriate avoidance, alleviation and mitigation measures.
- 5.3.2 The application site has one immediately adjacent neighbouring property; the proposed development would be approximately 35 metres from the eastern boundary which is shared with the dwelling Sam's Song on Walden House Road and approximately 70m dwelling to dwelling.
- 5.3.3 The proposed dwelling would be sited in approximately the same position as the previously approved replacement dwelling, it is pertinent to note that no concerns

were raised in terms of the impact on residential amenity at the time of the previous assessment.

- 5.3.4 Due to the extensive separation distance, it is not considered that the proposed dwelling would have an overbearing effect on this neighbouring property. There would be three first floor windows on the eastern elevation facing the neighbouring property however, given the distance from the neighbouring property, it is not considered that this would result in any overlooking and loss of privacy to Sam's Song. There are no other residential properties bordering the remainder of the application site.

5.4 Access, Parking and Highway Safety

- 5.4.1 Policy T1 of the approved LDP seeks to create additional sustainable transport opportunities. 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.
- 5.4.2 The replacement dwelling would result in a four bedroom property and therefore would require parking provision for three vehicles, the proposed single storey double cartlodge would provide space to park two cars and the further parking could be accommodated to the front of the dwelling and outbuilding. Therefore, there is no objection with regards to car parking.
- 5.4.3 The existing access for the site is to remain. The Highways Authority have been consulted and there is no objection to the scheme in terms of highway safety, subject to the inclusion of a condition regarding construction traffic and storage of materials.

5.5 Private Amenity Space and Landscaping

- 5.5.1 Policy D1 of the approved LDP requires all development to provide sufficient and usable private and public amenity spaces, green infrastructure and public open spaces. In addition, the adopted Maldon Design Guide advises a suitable garden size for each type of dwellinghouse, namely 100m² of private amenity space for dwellings with three or more bedrooms, 50m² for smaller dwellings and 25m² for flats.
- 5.5.2 The proposed development includes a 651.9sqm extension of the residential garden land it is considered that there is sufficient existing garden space well in excess of the 100m² required to serve the replacement dwelling. Therefore, there is no justification in extending the residential curtilage.
- 5.5.3 The submitted block plan shows that the existing soft landscaping and boundary treatments would be retained and extended. Should the application be approved it is considered a condition relating to the submission of details in respect of boundary treatments and landscaping are imposed, particularly as the hedge running along the western side boundary of the site is not within the applicant's control and due to the location of the trees on the southern part of the site a condition should be included for the submission of the tree retention and protection scheme to ensure that the development maintains the rural nature of the site.

6. ANY RELEVANT SITE HISTORY

- **14/00844/FUL** Replacement dwelling - Refused
- **15/00024/FUL** Replacement dwelling - Approved
- **18/00817/FUL** Replacement dwelling (renewal of planning permission FUL/MAL/15/00024) - Approved
- **21/00901/FUL** Replacement dwelling with detached garage and extension to garden land – Refused

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	We raise no objection but wish to make the following comment. Provided the siting of the dwelling further back from the front (road side) of the site.	Noted.

7.2 Statutory Consultees and Other Organisations

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
County Highways	No objection subject to conditions.	Noted.

7.3 Internal Consultees

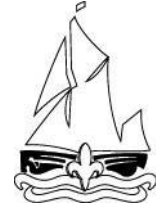
Name of Internal Consultee	Comment	Officer Response
Environmental Health	No objection subject to conditions.	Noted.

7.4 Representations received from Interested Parties

7.4.1 No representations have been received from interested parties.

8. REASON FOR REFUSAL

1. The proposed change of use of agricultural land to residential, would result in the unnecessary urbanisation of the open and undeveloped countryside, which currently positively contributes to the rural area in which it is set. The proposal would result in demonstrable visual harm to the site and surrounding area contrary to policies S1, S8, and H4 of the Maldon District Local Development Plan and Government guidance contained in the National Planning Policy Framework



**REPORT of
DIRECTOR OF SERVICE DELIVERY**

to
**NORTH WESTERN AREA PLANNING COMMITTEE
18 MAY 2022**

Application Number	22/00414/FUL
Location	Jechs Barn, Crouchmans Farm Road, Ulting, CM9 6QT
Proposal	Change of use of land to residential and single storey side extension
Applicant	Mrs Jo Witney
Target Decision Date	12.05.2022
Case Officer	Nicola Ward
Parish	ULTING
Reason for Referral to the Committee / Council	Member Call In Councillor S J N Morgan has called in the application for the following policy reasons: LDP S1, S7, S8, D1 and H7

1. RECOMMENDATION


REFUSE for the reasons as detailed in Section 8 of this report.

2. SITE MAP

Please see below.

Jechs Barn Crouchmans Farm Road Ulting
22/00414/FUL



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	Organisation:	Maldon District Council
	Department:	Department
	Comments:	Not Set
	Date:	09/05/2022
	MSA Number:	100018588
www.maldon.gov.uk		

3. SUMMARY

3.1 Proposal / brief overview, including any relevant background information

- 3.1.1 The application site is located on a bend to the north and to the east of Crouchmans Farm Road, outside of a defined settlement boundary. Access to the site is taken from the south of the site where it joins Crouchmans Farm Road. The site is occupied by an existing single storey dwelling. The neighbouring sites consist of residential units and agricultural buildings, with the remainder being open countryside.
- 3.1.2 The Planning permission is sought for the change of use of land to residential and the erection of a single storey side extension to the existing dwelling. The proposed extension would be located to the northern end of the dwelling and would project to the west of the dwelling resulting in an 'L' shaped property. The proposed extension would have a maximum height of 3.7m, with an eaves height of 2.4m, a width of 10m and a depth of 4.3m. The exterior of the extension would be finished in black weatherboard with clay roof tiles to match the existing property.
- 3.1.3 The proposed change of use relates to a large area of land that surrounds the main dwelling on the site and the proposed extension. The land is proposed to change from agricultural use to residential. It should be noted that upon assessing the site and application it has been noted that the change of use of land, particularly in relation to the western side of the existing dwelling, has already been undertaken without obtaining planning consent beforehand and therefore, the application is part retrospective.
- 3.1.4 This application is a resubmission of 21/00218/FUL which was refused for the following reason:

'The proposed extension, as a result of its siting, design, scale and bulk, would result in an overly large and incongruous addition to the dwelling that erodes the existing openness of the site, which in conjunction with the change of use of agricultural land to residential garden space, would result in a harmful suburbanisation of the countryside, to the detriment of its intrinsic character and beauty. It is therefore considered that the proposal would cause demonstrable harm to the character and appearance of both the application site and surrounding countryside, contrary to Policies S1, S8, D1 and H4 of the Maldon District Local Development Plan (MDLDP) and Government guidance contained within the National Planning Policy Framework (NPPF).'

- 3.1.5 There have been no alterations to the current application from the previously refused application.

3.2 Conclusion

- 3.2.1 The current application does not overcome the previous reasons for refusal as there have been no alterations to the proposed development. Furthermore, there are no new material considerations since the determination of the last application that would indicate that a different outcome should be reached from determination of this application. Therefore, it is considered that the proposed development as a result of the scale, mass and bulk of the proposed extension would result in an overly large addition to the application site, which would result in demonstrable harm to the character and appearance of the site and the wider area. Therefore, the development is considered to be contrary to policies S1, S8, D1 and H4 of the

Maldon District Local Development Plan (MDLDP) and guidance contained with the National Planning Policy Framework (NPPF).

4. MAIN RELEVANT POLICIES

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

4.1 National Planning Policy Framework 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
- 54-57 Planning conditions and obligations
- 119-123 Making effective use of land
- 126-136 Achieving well-designed places
- 148-169 Meeting the challenge of climate change, flooding and coastal change
- 184-192 Conserving and enhancing the historic 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
- D5 Flood Risk and Coastal Management
- H4 Effective Use of Land

4.3 Relevant Planning Guidance / Documents:

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

5. MAIN CONSIDERATIONS

5.1 Principle of Development

5.1.1 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 Local Development Plan (LDP).

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

5.1.3 Policy H4 of the LDP states that 'small, unobtrusive extensions of residential areas into the surrounding countryside, which will not adversely affect the character and rural amenities of the site and wider countryside, may be approved where the following criteria are met:

- 1) The proposal will not involve the loss of any important landscape, heritage features or ecology interests; and

- 2) Provision is made for suitable landscaping to ensure boundary treatments are of an appropriate rural character and appearance.'
- 5.1.4 Having regard to the above it is considered that Policy H4 broadly supports the change of use subject of this application in principle. However, the specific policy criterion will be considered within the relevant sections below.
- 5.1.5 Notwithstanding the above, the extension of the residential garden would involve the loss of some agricultural land. Policy S8, seeks to protect the countryside and sets out suitable forms of development that will be considered outside the settlement boundary. Residential extensions into agricultural land are not a form of development listed, therefore, the principle of the change of use is not automatically acceptable in principle.

5.2 Design and Impact on the Character of the Area

- 5.2.1 The planning system promotes high quality development through good inclusive design and layout, and the creation of safe, sustainable, liveable and mixed communities. Good design should be indivisible from good planning. Recognised principles of good design seek to create a high quality built environment for all types of development.
- 5.2.2 It should be noted that good design is fundamental to high quality new development and its importance is reflected in the NPPF.
- 5.2.3 This principle has also been reflected to the approved LDP. The basis of policy D1 of the approved LDP seeks to ensure that all development will respect and enhance the character and local context and make a positive contribution in terms of:
- Architectural style, use of materials, detailed design features and construction methods. Innovative design and construction solutions will be considered where appropriate;
 - Height, size, scale, form, massing and proportion;
 - Landscape setting, townscape setting and skylines;
 - Layout, orientation, and density;
 - Historic environment particularly in relation to designated and non-designated heritage assets;
 - Natural environment particularly in relation to designated and non-designated sites of biodiversity / geodiversity value; and
 - Energy and resource efficiency.
- 5.2.4 Similar support for high quality design and the appropriate layout, scale and detailing of development is found within the MDDG (2017).
- 5.2.5 The application site lies outside of any defined development boundary. According to policies S1 and S8 of the LDP, the countryside will be protected for its landscape, natural resources and ecological value as well as its intrinsic character and beauty. The policies stipulate that outside of the defined settlement boundaries, the Garden Suburbs and the Strategic Allocations, planning permission for development will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon and provided the development is for proposals that are in compliance with policies within the LDP, neighbourhood plans and other local planning guidance.

- 5.2.6 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.
- 5.2.7 The current application hosts no alterations from the previously refused application 21/00218/FUL.
- 5.2.8 It is noted that the existing site is neighboured by existing buildings, the site is not considered to be of any important landscape, heritage or ecological interests. However, when considering the proposed change of use, which is likely to include the formalization of the natural verdant character of the area and associated residential paraphernalia, that will inevitably be associated with the change of use, it is considered that the proposal would be to the detriment of the rural appearance of the area. Whilst a condition could be imposed to limit development of this area in planning terms, the Local Planning Authority (LPA) could not prevent the provision of such paraphernalia as the formalization of the character and appearance of the area. Therefore, the cumulative impact of the change of use and the extension, as discussed below, would result in unacceptable visual impacts on the rural area.
- 5.2.9 Further to the above and in relation to criterion 2 of the Extension of residential garden into the countryside section of Policy H4, limited to no information has been provided regarding boundary treatments. In order to be able to provide suitable privacy to the amenity area of the site it is unlikely that suitable boundary treatments that would assimilate with the rural area could be achieved, in particular as Policy 5 of the Neighbourhood Plan resists the use of high walls and fences. This would further contribute to the demonstrable harm to the character and appearance of the rural area.
- 5.2.10 In terms of the impact of the proposed extension on the character and appearance of the area, the proposed extension would occupy a footprint of approximately 43m², this is considered to be a significant increase in built form as it is almost equal to the footprint of the host dwelling (44.5m²), it is therefore considered to be a dominating addition to the dwellinghouse. Furthermore, due to the orientation and position of the proposed extension, it would to some extent erode the openness of the site and close the existing gap between the built forms on the site.
- 5.2.11 In addition to the above, the height and width of the proposed extension is equal to that of the existing dwelling, which further exacerbates the bulk of the proposal and prevents the extension from being a subservient addition to the host dwelling.
- 5.2.12 Whilst it is noted that the dwelling is set back approximately 13 metres from the access to the site from Crouchmans Farm Lane, which is the vantage point where the dwelling and proposed extension would be most visible, and that the proposed extension would sit over 20 metres from this point and so would be partly blocked from public vantage points by the existing built form of the wider site, views of the development would be available from the site entrance. However, although it is not considered that the proposed extension would be an overly prominent form of development, these points alone do not mitigate against the harm identified above.

- 5.2.13 Having regard to the points raised above it is considered that the previous reasons for refusal have not been overcome as no changes or alterations have been proposed. Furthermore, there are not considered to be any new material considerations, since the determination of the last application, that would result in the outcome of the application being different to that of the previous planning application. The proposed development as a result of its siting, scale, bulk and mass would be contrary to policies S1, S8, D1 and H4 of the MDLDP.

5.3 Impact on Residential Amenity

- 5.3.1 The basis of policy D1 of the approved LDP seeks to ensure that development will protect the amenity of its surrounding areas taking into account privacy, overlooking, outlook, noise, smell, light, visual impact, pollution, daylight and sunlight. This is supported by section C07 of the MDDG.
- 5.3.2 The application site is bordered by two neighbouring properties, 42 metres to the south east is 'Field End' and approximately 31 metres to the north is 'Longacre'. Due to the single storey nature of the proposed extension it is not considered that it would represent an unneighbourly form of development in relation to either of the neighbouring properties.
- 5.3.3 To the east of the dwelling is an agricultural building associated with Fieldend Farm, whilst the proposed extension would sit closer to this building it is not considered to result in unacceptable living conditions to the habitable rooms within the proposed extension.
- 5.3.4 Having regard to the above it is not considered that the development would be detrimental to the existing on neighbouring occupiers' amenity.

5.4 Access, Parking and Highway Safety

- 5.4.1 Policy T1 of the approved LDP seeks to create additional sustainable transport opportunities. 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.
- 5.4.2 The Council's adopted Vehicle Parking Standards (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.

- 5.4.3 The number of bedrooms at the application site is proposed to increase from one to two and thus the vehicle parking provision requirement at the site would increase from one space to two. The submitted planning application form states that there are two vehicle parking spaces currently provided at the site and they are to be retained, but no detail has been provided on the plans to show the siting of the parking. However, it is noted that there is an existing hardstanding located to the east of the existing dwelling which could accommodate two vehicles. Therefore, there is no objection in this regard.

5.5 Private Amenity Space and Landscaping

- 5.5.1 Policy D1 of the approved LDP requires all development to provide sufficient and usable private and public amenity spaces, green infrastructure and public open spaces. In addition, the adopted MDDG advises a suitable garden size for each type of dwellinghouse, namely 100m² of private amenity space for dwellings with three or more bedrooms, 50m² for smaller dwellings and 25m² for flats.
- 5.5.2 The proposal includes a change of use of land to the west of the existing property to be used as amenity space. The proposed area is well in excess of the required 100sqm and therefore, the proposal is considered acceptable in this regard. Whilst this does provide some weight in favour of the application in terms of increasing the amount of private amenity space available, it is not considered that this limited benefit outweighs the harm previously identified.

6. ANY RELEVANT SITE HISTORY

- 6.1 The relevant planning history is set out in the table below:

Application Number	Description	Decision
18/05157/DET	Compliance with conditions application COUPA/MAL/16/01324 (Prior approval of proposed change of use of agricultural building to a dwellinghouse (use class C3)) Condition 3 - Materials. Condition 4 - Boundary treatments.	Conditions Cleared
16/01324/COUPA	Prior approval of proposed change of use of agricultural building to a dwellinghouse (use class C3)	Prior Approval Granted
16/00552/COUPA	Notification for prior approval for a proposed change of use of agricultural building to a dwellinghouse	Prior Approval Refused
21/00218/FUL	Change of use of land to residential and single storey side extension.	Refused

7. CONSULTATIONS AND REPRESENTATIONS RECEIVED

7.1 Representations received from Parish / Town Councils

Name of Parish / Town Council	Comment	Officer Response
Langford and Ulting Parish Council	No Comment	N/A

7.2 Representations received from Interested Parties

7.2.1 No letters of representation for the application have been received.

8. PROPOSED REASON FOR REFUSAL

- 1 The proposed extension, as a result of its siting, design, scale and bulk, would result in an overly large and incongruous addition to the dwelling that erodes the existing openness of the site, which in conjunction with the change of use of agricultural land to residential garden space, would result in a harmful suburbanisation of the countryside, to the detriment of its intrinsic character and beauty. It is therefore considered that the proposal would cause demonstrable harm to the character and appearance of both the application site and surrounding countryside, contrary to Policies S1, S8, D1 and H4 of the MDLDP and Government guidance contained within the NPPF.

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**REPORT of
DIRECTOR OF SERVICE DELIVERY**

to
NORTH WESTERN AREA PLANNING COMMITTEE
18 MAY 2022

Application Number	22/00048/MLA
Location	Land Opposite 34 Hall Road, Great Totham, Essex
Proposal	Variation of Section 52 Agreement (mal/408/84) dated 10/10/84 relating to land at the rear of Seagers and Millways
Applicant	Smart Planning Limited
Agent	
Target Decision Date	08/03/2022
Case Officer	Hannah Bowles
Parish	MALDON NORTH
Reason for Referral to the Committee / Council	No scheme of delegation applies.

1. RECOMMENDATION

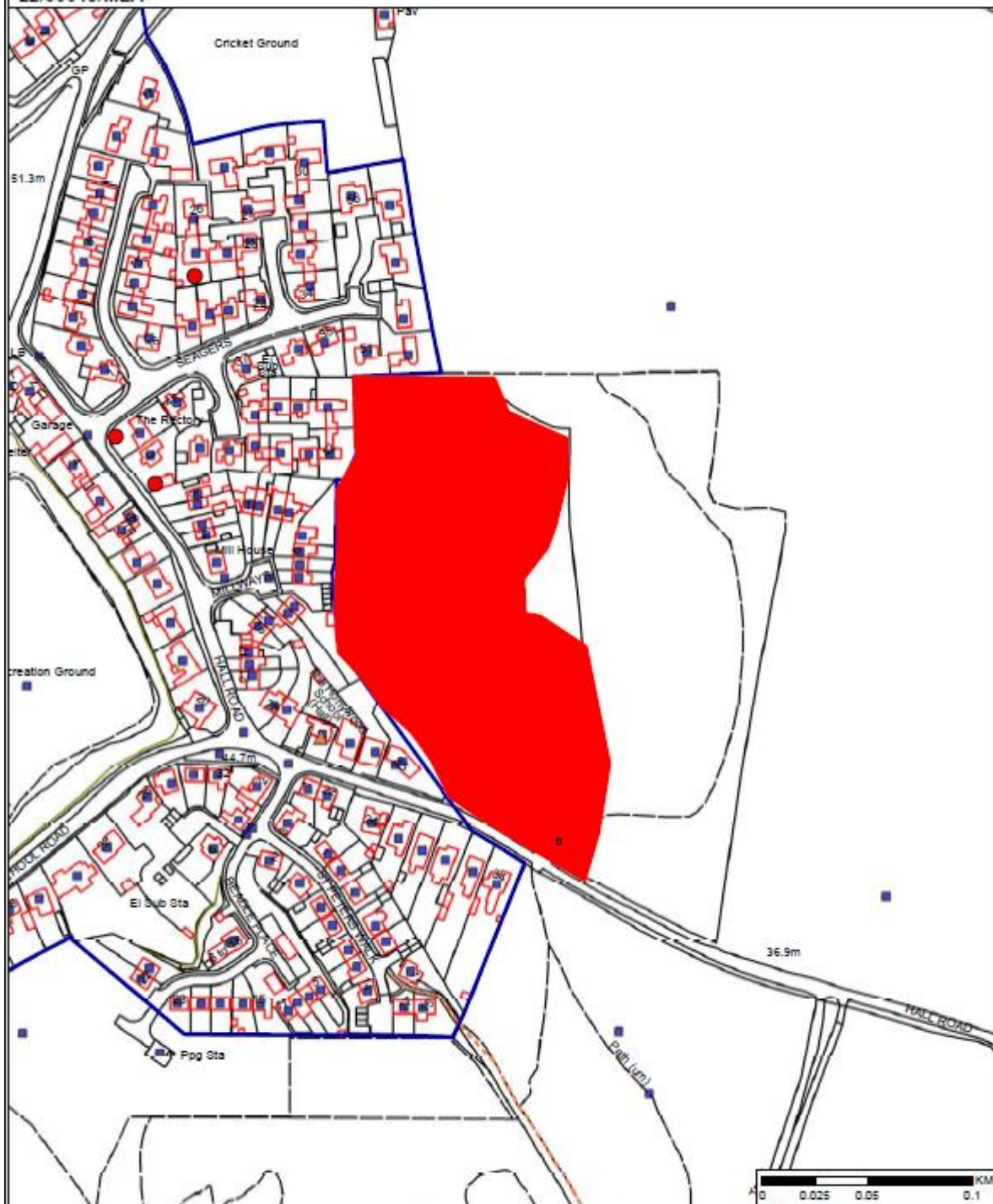
REFUSE for the reasons as detailed in Section 8 of this report.

2. SITE MAP

Please see below.

Land Opposite 34 Hall Road - Great Totham

22/00048/MLA



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Maldon District Council 100018588 2014



www.maldon.gov.uk

Scale: 1:2,500

Organisation: Maldon District Council

Department: Planning Services

Comments: NW Committee

Date: 09/05/2022

MSA Number: 100018588

3. SUMMARY

3.1 Proposal / brief overview, including any relevant background information

- 3.1.1 The application site is located to the north of Hall Road, outside but adjacent to the settlement boundary of Great Totham. The site is approximately 1.84 hectares in size and is located on the eastern edge of the village of Great Totham. The site is undeveloped and is currently in a natural state, laid to grass with vegetation covering parts of the site and around the boundaries. The site was formerly used as a gravel pit which has since been back filled and is undulated in appearance.
- 3.1.2 There is open and undeveloped countryside to the east of the site, the southern boundary of the site fronts Hall Road, the western boundary abuts the settlement boundary and the rear garden of several properties, along with the majority of the northern boundary.
- 3.1.3 The application seeks to vary a Section 52 (S52) legal agreement of the Town and Country Planning Act (TCPA) 1971 (now repealed) associated with a historic planning application referenced MAL/408/84. The application is similar to a previous application to vary the same legal agreement, originally made in 2017 and determined in 2018. The S52 agreement, whilst relating to the development approved in 1984 and since built (6 dwellings), affects additional associated land within its defined boundary. Planning permission was granted on appeal in 2017 for a housing development on part of this associated land subject to a legal agreement under S106 of the TCPA 1990. The original S52 legal agreement was in conflict with the 2017 approval and as such, following the refusal of the Council on the 17 May 2018 to determine the said application to vary the S52 agreement, an appeal by the owner to the Lands Tribunal was, on the 5 June 2020 successful in relinquishing the requirement of the agreement to prevent, amongst other things, the owner of the land not to erect, or permit to be erected, or apply for planning permission to erect, any permanent buildings or structures at any time on the land edged green on the S52 legal agreement plan. To be clear, this variation relates only to the land the subject of planning permission 20/00428/FUL, which is the same land the subject of the lands Tribunal decision. The site is located on the eastern edge of Great Totham with the main residential area to the west, and currently open land to the east. The land is best described as a former gravel pit, historically landfilled, rising to the north over an undulating surface with scattered trees, generally low-level scrub vegetation and rough grassland

3.2 Conclusion

- 3.2.1 This is a detailed matter and considers the relevance of the obligations as set out in 1984 and their relevance at this time being guided by the definitions of the same as in the National Planning Policy Framework 2021(NPPF). Notwithstanding, a legal decision by the Land Tribunal has been made on 5 June 2020 and is a material consideration in this application and is considered the main determinant in this case. Taking in to account the previous decision of the Land Tribunal regarding the same matter it is not considered it would be reasonable for the Council to frustrate the development and the Council should voluntarily vary the existing Section 52 Agreement relating solely to the area edged red on planning permission MAL/FUL/20/0428.

4. MAIN RELEVANT POLICIES

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

- 4.1 This application does not concern the application of Development Plan Policies as set out in the Maldon District Local Development Plan 2017 (MDLDP). Development of the land has been approved subject to Local Plan Policies and other material considerations. For the purposes of considering this application, it is to be considered whether the legal agreement meets the tests as set out in the (NPPF) 2021.
- 4.2 Notwithstanding, a legal decision by the Land Tribunal has been made on 5 June 2020 and is a material consideration in this application and is considered the main determinant in this case.

5. **MAIN CONSIDERATIONS**

5.1 **Main Consideration**

- 5.1.1 In granting planning permission for the 6 dwellings in 1984, the Council placed a number of restrictions on the development by a then Section 52 Legal Agreement. A S52 agreement is similar in effect to a Section 106 Agreement. The S52 legislation was repealed back in 1990, although existing S52 Agreements are still technically enforceable. The agreement incorporated restrictions and required certain actions, firstly the transference of part of the site to an amenity use. This has been done and there is a recreation amenity space on this land located off Maldon Road. As mentioned, the S52 agreement also prohibits the landowner from asking for planning permission and erecting any buildings on land coloured green on the plan as attached to the agreement.
- 5.1.2 There is no formal application process for this type of procedure. The original application submitted to the Council by the applicant to vary the legal agreement was made under the terms of Section 106A of the Town and Country Planning Act (TCPA) 1990 (as amended). It is clear that this legislation applies only to agreements made pursuant to Section 106 of the 1990 Act and not planning obligations agreed under Section 52 of the 1971 Act. The Council can however choose to vary the legal agreement voluntarily, outside of an application.
- 5.1.3 The applicant wishes to relinquish the requirements of the S52 agreement, which prevents a future planning application being made on part of the site, insofar as it relates to the land to which the recent 2021 full planning permission (reference 20/00428/FUL) relates.
- 5.1.4 Previously an application to relinquish the requirements of the S52 Agreement was submitted to the Council on the 26 April 2017. The application was reported to this committee sitting on the 3 April 2018 where consideration was deferred pending a legal opinion. The application was reported to Full Council on 17 May 2018. The legal opinion stated, amongst its consideration: *“the Section 52 restriction ...serves no planning purpose in today’s world ...The Restriction would not be enforceable and if application was made for its dischargeit is likely to be granted despite any resistance by the Council”*. The decision of Full Council was to ‘Refuse to Determine the application’ on the grounds that *‘The application was submitted with reference to Section 106A of the Town and Country Planning Act 1990, but such legislation is not the appropriate mechanism to amend an obligation agreed pursuant to Section 52 of the Town and County Planning Act 1971’*. The informative following the decision stated, *‘Notwithstanding the above, the Local Planning Authority has treated the application as a request to vary the Section 52 agreement. After consideration it was decided that as the site affected remains outside the development boundary as defined by the Maldon District Local Development Plan, the agreement still has a planning purposes in terms of restricting residential development’*.

- 5.1.5 The matter of relinquishing the requirements of the S52 agreement was the subject of an appeal to the Lands Tribunal on 25 June 2018 under Section 84 of the Law of Property Act 1925. The appeal was successful on the 5 February 2020. The summary of the matters relating to the S52 covenants attached to the legal agreement, at Paragraph 29 states:

“In my judgement, the appropriate application of the Tribunal’s discretion in this application is to modify the covenant to the extent that this would permit the application as granted by the Planning Inspector on appeal, conditional upon the provision of affordable housing as specified in the section 106 agreement which the applicants have entered into, and remove the restriction on applying for planning permission.”

- 5.1.6 Paragraph 29 referred to above confirms the modification relates only to the site the subject of the planning approval, and not any other land. Subsequent to this decision, a new full planning application was made, in the same terms as the original outline planning application but including all the details that were reserved under the appeal scheme. Full Planning permission, subject to an updated S106 legal agreement which included the securing of affordable housing, was granted on the 22 September 2021 reference 20/00428/FUL.
- 5.1.7 The Council could again refuse to voluntarily agree to vary the Agreement on the basis that it relates to a different application to that which was successfully appealed to the land tribunal. However, given that the applications are substantially the same (the latter application being the ‘Full’ form of the ‘outline’ application), the Council might be seen as acting unreasonably given a residential development, in light of the S52 legal agreement, has been granted, and the Council itself, subsequently approving a full application of a similar kind recently without regard to the S52 legal agreement. Should an application be submitted for any other part of the S52 land, it would be assessed on its merits in the usual way and having regard to any material considerations. The legal prohibition against submitting a planning application and erecting buildings on the land, is obviously found to be redundant by virtue of the decision of the Planning Inspector (through powers vested by the TCPA 1990, and all related legal precedents, case law and subordinate legislation), and the powers vested through the Lands Tribunal Act.
- 5.1.8 As outlined briefly above the S52 agreement has already been successfully appealed and its modification agreed. However, the modification allowed by the Lands Tribunal related solely to the 2017 outline application, and this permission has since expired. A new planning permission of a similar kind to the expired permission has been approved, with a different reference number to that which is on the current S52 agreement. It is considered, taking in to account the above history and the recent planning decision that a decision of the Council to not voluntarily vary the existing Section 52 Agreement relating solely to the area edged red on planning permission MAL/FUL/20/0428 could be seen as unreasonable behaviour.

6. ANY RELEVANT SITE HISTORY

- **FUL/MAL/09/00219** - Erection of two box stable block with tack room. Refused: 08.05.2009.
- **FUL/MAL/09/00600** - Erection of new stable block containing two stables and tack room, with grazing land. Refused: 14.09.2009.
- **FUL/MAL/11/00278** – Installation of a 'Nissen hut' within a secure compound for a temporary period of 12 months. Refused: 26.05.2011.

- **OUT/MAL/13/00786** - Erection of 50 no. market and affordable housing units, and a community pocket park, accessed from existing Hall Road access point. Refused: 03.07.2014 – Dismissed on Appeal: 29 June 2015.
- **OUT/MAL/16/00289** – Erection of 30 market and affordable housing units accessed via Hall Road. Refused 03 October 2016 – Allowed on Appeal: 14 February 2017
- **FUL/MAL/20/00428** – Erection of 30 dwellings with associated access and landscaping – Approved 22 September 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.	The Council objects to the variation. The legal (S52) Agreement remains relevant and should remain in place. No variation should be permitted, and the terms of the Agreement should be rigorously upheld.	The comments of the Town Council are noted, and are considered in the body of the report.

7.2 **Internal Consultees**

Name of Internal Consultee	Comment	Officer Response
Lead Legal Specialist	I have reviewed the information you have provided with the current application and the legal advice provided in 2018 relation to the above application. Having considered all the above I would recommend the application is approved. The application is substantially on the same basis as previously and the previous legal advice still applies.	Noted.

7.3 **Representations received from Interested Parties**

- 7.3.1 Three letters were received objecting to the application and the reasons for their objections are as set out below:

<p>The title reads: . accessed from the existing Hall Road access at the site – but the plan that was approved and the copy of the plan attached to the document indicates that the access point has moved, to the detriment of the owners of the properties of 32 and 34 Hall Road.</p>	<p>The application relates to a change of planning reference only, all other material considerations being equal, and not the planning approval and matters that led to that decision.</p>
<p>If you grant the applicants wishes it would seem to be counter to the Tribunal Judgement for Case No: LP/6/2018 where the partial relinquishing of the S 52 was granted to enable the facilitation of the development of only 30 dwellings that had already been granted full planning permission on a parcel of the land. The reason for my supposition is that the tribunal applicants have previously confirmed their acceptance of the proposed modification as outlined. The present landowners Lynton Homes, had purchased the land with full planning permission, but also knowing the restriction on the remainder of the land, therefore, by implication they have also accepted the judgement by Peter D McCrea FRICS. Nothing has changed in the interim except that Lynton Homes now wish to dispose of the land and it is now under offer after being marketed by Nicholas Percival, Colchester. It would suggest that the application by Smart Planning is nothing more than a move to facilitate the sale of the land and is not a "mere formality" as they suggest in their application. The prospective buyers should undertake the land purchase under the same conditions as Lynton Homes. In addition, I do not think it is the place of planning officers to help facilitate a commercial transaction unless there is going to be strong and demonstrable benefits to the local community that will gain support from residents. It is after all a well-known precedent that variations on land covenants are not granted simply for financial gain or expediency.</p>	<p>The application only relates to the partial discharge of the requirements of the S52 agreement. This is set out in the report and confirms only the land the subject of the planning approval and as such is in full compliance with the Tribunal decision. The only change effectively would be the replacement of the planning references.</p>
<p>The S52 was discharged on the actual development site by the HM Courts and Tribunal Service following an appeal but remained on the rest of the site and beyond, the inspector made the point that the S52 should remain on all land covered by it, except for the actual</p>	<p>The application only relates to the partial discharge of the requirements of the S52 agreement. This is set out in the report and confirms only the land the subject of the planning approval and as such is in full compliance with the Tribunal decision. The only change</p>

development site, I quote the inspectors comments, "I do not consider it appropriate to permit a blanket discharge, nor to relax the covenant in relation to any wider than the land required for the development proposed". This information can be found in the attached H M Courts & Tribunal information from Smart Planning, page 10, paragraph 28, I would ask what has changed since then, if the inspector did not consider it appropriate at that time, for whatever reason, why should it be appropriate now?	effectively is the replacement of the planning references.
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8. **RECOMENDATION**

1. The Local Planning Authority resolves that the applicant's submission is treated as a request to voluntarily vary the existing Section 52 Agreement relating solely to the area edged red on planning permission MAL/FUL/20/0428.