

APOLOGIES Committee Services  
Email: [Committee.clerk@maldon.gov.uk](mailto:Committee.clerk@maldon.gov.uk)

DIRECTOR OF STRATEGY,  
PERFORMANCE AND  
GOVERNANCE  
Paul Dodson

17 May 2023

Dear Councillor

You are summoned to attend the meeting of the;

**SOUTH EASTERN AREA PLANNING COMMITTEE**

on **THURSDAY 25 MAY 2023** at **7.30 pm**

in the **Burnham Town Council Offices, Chapel Road, Burnham-on-Crouch, Essex, CM0 8JA.**

Please Note: All meetings will 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 do so via Microsoft Teams.

To register your request to speak/attend in person, please complete 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 G Bassenger  
V J Bell  
D O Bown  
A Fittock  
A S Fluker  
L J Haywood  
W J Laybourn  
M G Neall  
R G Pratt  
U C G Siddall-Norman  
W Stamp, CC





**AGENDA**  
**SOUTH EASTERN AREA PLANNING COMMITTEE**  
**THURSDAY 25 MAY 2023**

---

1. **Chairman's notices**

2. **Apologies for Absence**

3. **Minutes of the last meeting** (Pages 7 - 8)

To confirm the Minutes of the meeting of the Committee held on 12 April 2023, (copy enclosed).

4. **Disclosure of Interest**

To disclose the existence and nature of any Disclosable Pecuniary Interests, Other Registrable interests and Non-Registrable Interests relating to items of business on the agenda having regard to paragraph 9 and Appendix B 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. **23/00076/FUL - Land North West of Riversleigh, Nipsells Chase, Mayland** (Pages 9 - 20)

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

6. **23/00079/FUL - Land between 45 Steeple Road and 1 Mill Road, Mayland** (Pages 21 - 46)

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

7. **23/00080/FUL - Land between 45 Steeple Road and 1 Mill Road, Mayland** (Pages 47 - 66)

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

8. **23/00266/VAR - Paton Place, Nipsells Chase, Mayland** (Pages 67 - 88)

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. 5-8.
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](http://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, Officers will notify those present. Please use the fire exits marked with the green running man. The fire assembly point is Barclays Bank car park. Please gather there and await further instruction.

## **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.

This page is intentionally left blank



**MINUTES of  
SOUTH EASTERN AREA PLANNING COMMITTEE  
12 APRIL 2023**

---

**PRESENT**

Chairman	Councillor R P F Dewick
Vice-Chairman	Councillor A S Fluker
Councillors	V J Bell, Mrs P A Channer, M W Helm, N J Skeens and W Stamp, CC

**691. CHAIRMAN'S NOTICES**

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

**692. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors M G Bassenger and B S Beale MBE.

**693. MINUTES OF THE LAST MEETING**

**RESOLVED** that the Minutes of the meeting of the Committee held on 15 March 2023 be approved and confirmed.

**694. DISCLOSURE OF INTEREST**

The Chairman declared a non-registerable interest as he was acquainted with the applicant and the agent for Agenda Item 5.

Councillors Mrs P A Channer, A S Fluker and M W Helm declared a non-registerable interest, in that they were also acquainted with the agent for Agenda Item 5.

**695. 22/01135/FUL - LOFTMANS FARM, MALDON ROAD, STEEPLE, CM0 7RR**

<b>Application Number</b>	<b>22/01135/FUL</b>
<b>Location</b>	Loftmans Farm Maldon Road Steeple CM0 7RR
<b>Proposal</b>	Construction of a two-storey detached rural workers dwelling. Change of land use to C3.
<b>Applicant</b>	Mr and Mrs Steven Massenhove
<b>Agent</b>	Mr Anthony Cussen - Cussen Construction Consultants
<b>Target Decision Date</b>	EOT to 22.02.2023
<b>Case Officer</b>	Tim Marsh

Parish	STEEPLE
<b>Reason for Referral to the Committee / Council</b>	Member call in from Councillors Mrs P A Channer and M W Helm Reason: S1 - Sustainable growth, S8 - Settlement Boundaries and the Countryside and D1 - Design Quality and Built Environment, H7 – Agricultural and Essential Workers Accommodation, E4 - Agricultural and Rural Diversification

Following the Officer's presentation, the Agent, Mr Cussen, addressed the Committee. The Chairman then opened the discussion.

Councillor M W Helm proposed to approve the application, contrary to the Officers recommendation, citing the following reasons: S1 - Sustainable growth, S8 - Settlement Boundaries and the Countryside and D1 - Design Quality and Built Environment, H7 – Agricultural and Essential Workers Accommodation and E4 - Agricultural and Rural Diversification. This was seconded by Councillor Mrs P A Channer. It was further noted that without this dwelling the applicant would not be able expand his business and needed to be onsite to look after the animals overnight. In addition, the applicant had submitted a draft Section 106 agreement with the application. Officers stated that in line with policy H7, the proper approach, if a scheme were to be supported, was for a temporary structure which can easily be removed. Furthermore, it was highlighted that the application was a change of use of the land to C3 (Residential) with a rural worker's dwelling, which had future implications for the use of the land as a commercial/agricultural use,

A lengthy discussion took place, which included the inappropriate scale of the proposed building, specifically as there had been no change in the design from the previous refusal before committee, the improvement in the appearance of the site through the removal of the various outbuildings and the smaller footprint of the proposed building. The Chairman then put Councillor Helm's proposal, to approve the application, contrary to the Officer's recommendation with conditions, including an agricultural tie condition to the vote. It was also drawn to members attention that the decision would be subject to the confirmation of the submitted S106 agreement. At this point and in accordance with Procedure Rule No. 13 (3), Councillor A S Fluker requested a recorded vote, this was duly seconded and the voting was as follows:

For the recommendation:

Councillors Mrs P A Channer, V J Bell, M W Helm and W Stamp, CC.

Against the recommendation:

Councillor N J Skeens.

Abstention:

Councillors R P F Dewick and A S Fluker.

As a result, the proposal was agreed.

**RESOLVED** that the application be **APPROVED** subject to conditions and a S106 agreement, to be agreed by Officers in consultation with the Chairman.

The meeting closed at 8.13 pm.

R P F DEWICK  
CHAIRMAN



**REPORT of  
DIRECTOR OF SERVICE DELIVERY**

---

**to  
SOUTH EASTERN AREA PLANNING COMMITTEE  
25 MAY 2023**

<b>Application Number</b>	<b>23/00076/FUL</b>
<b>Location</b>	Land North West of Riversleigh, Nipsells Chase, Mayland
<b>Proposal</b>	Change of use from agricultural building to 2 bedroom bungalow (C3 Use) and alterations to fenestration
<b>Applicant</b>	Mr & Mrs Kenny Paton
<b>Agent</b>	None
<b>Target Decision Date</b>	13.04.2023
<b>Case Officer</b>	Devan Hearnah
<b>Parish</b>	<b>MAYLAND</b>
<b>Reason for Referral to the Committee / Council</b>	Member of the Council

**1. RECOMMENDATION**

**REFUSE** subject to the reasons set out in section 8.

**2. SITE MAP**

Please see below.



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.  
Malden District Council 100018566 2014

MSA Number: 100018588

### **3. SUMMARY**

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

##### Application site

- 3.1.1 The application site is located on the western side of Nipsells Chase within a rural area outside the defined settlement boundaries of Mayland and is a designated wildlife site. The wider site was an established Orchard until the 1970s, but was cleared in more recent years of almost all trees and is grassed over with the exception of a building that was granted planning permission under application 18/00280/FUL and varied under 20/00574/FUL as an apple storage barn. The site also includes an access track taken from the western side of Nipsells Chase, running east to west and then north to south onto a hardstanding at the front of the building. There are also a number of young trees planted to the southwest of the site.
- 3.1.2 The surrounding area of the application site is largely undeveloped. There are some examples of dwellings to the north and south of the application site and a dwelling has been granted under the terms of application 21/00628/FUL. There is also an extant permission (20/00345/FUL) for a stable building within the northern part of the wider site however, this wider area appears to be used for agricultural purposes. Further to the west of the application site is a woodland.

##### Proposal

- 3.1.3 Planning permission has been sought for a change of use from an agricultural building to a 2-bedroom bungalow, as well as alterations to the fenestration. The main changes to the building approved under application 20/00574/FUL are:
- The addition of a window on the south elevation and one on the north elevation to serve en-suites.
  - Re-configuration of the internal layout, including the addition of walls to provide living space which accommodates two en-suite bedrooms, a living room, bathroom, utility and kitchen/diner area.
- 3.1.4 Based on an Enforcement site visit undertaken, the internal works have already taken place.

#### **3.2 Conclusion**

Based on the information submitted and available to the Council and having regard to the design, appearance, layout, character and purpose of the application building, it has not been demonstrated that the building, as constructed, constitutes an 'apple storage barn' as authorised by the grant of planning permission 20/00574/FUL. Furthermore, it has not been demonstrated that the use of the building for agricultural purposes was more than *de minimis* and therefore, the use should be disregarded in accordance with the 'Kwik-Save' case. Consequently, the building is unauthorised development, and the Council cannot reasonably approve an application for a permission for a 'change of use' of a building where the construction of the building is unauthorised.

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

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

#### **4.1 National Planning Policy Framework 2021 including paragraphs:**

- 7 Sustainable development
- 8 Three objectives of sustainable development
- 10-12 Presumption in favour of sustainable development
- 38 Decision-making
- 47-50 Determining applications
- 54-58 Planning conditions and obligations
- 84- 85 Supporting a prosperous rural economy
- 92 – 103 Promoting healthy and safe communities
- 104-113 Promoting sustainable transport
- 119-123 Making effective use of land
- 126-136 Achieving well-designed places
- 152 – 169 Meeting the challenge of climate change, flooding and coastal change
- 174-188 Conserving and enhancing the natural environment

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

- S1 Sustainable Development
- S8 Settlement Boundaries and the Countryside
- D1 Design Quality and Built Environment
- D2 Climate Change and Environmental Impact of New Development
- E1 Employment
- E4 Agricultural and Rural Diversification.
- H2 Housing Mix
- H4 Effective Use of Land
- N2 Natural Environment and Biodiversity
- I1 Infrastructure and Services
- T1 Sustainable Transport
- T2 Accessibility

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

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

### **5. MAIN CONSIDERATIONS**

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

##### Does the development fall within a change of use?

- 5.1.1 Planning permission has previously been granted for the construction of an apple storage barn at the site (20/00574/FUL). It is acknowledged that the exterior of the building has been constructed largely in accordance with the previously approved plans, albeit there are now additional windows being proposed as part of this application. However, in order to address whether or not the application represents a change of use, the Council must determine, as a matter of fact and degree, whether the building as erected constitutes an 'apple storage barn' as allowed under the original permission. To determine this the Council needs to determine if the building is authorised. In considering this, regard should be had to the design, appearance, layout, character and purpose of the building as well as its use. If the Council concludes that a dwellinghouse has in fact been constructed, even where it is visually

compliant with the plans, then it cannot be concluded that the previous permission for an 'apple storage barn' is extant.

5.1.2 The Council has sought independent legal advice on the above matter, which has been factored into the assessment below.

5.1.3 There are three relevant cases to consider in respect of this matter:

- Sage v Secretary of State for the Environment, Transport and the Regions [2003] 1 WLR 983.
- Welwyn Hatfield BC v SSCLG [2011] 2 AC 304
- Kwik-Save Discount Group Ltd v Secretary of State for Wales (1981) 42 P&CR 166.

5.1.4 In the 'Sage' case an enforcement notice was issued for the erection of a dwellinghouse. The Appellant appealed on the grounds that the building was an agricultural building that did not require planning permission and that it was substantially complete four years prior to the notice. The appeal was dismissed on the basis that the building was not agricultural but a dwellinghouse given its layout and appearance. In reaching this conclusion the Inspector considered how the building was constructed with domestic and not agricultural features. The materials, the fenestration and the inclusion of cavity block walls were indicative of a residential building rather than agricultural. Emphasis was placed on the need to assess a structure based on its physical and design features, noting that *'Keeping a pig in the sitting-room or hens in the kitchen does not turn a dwelling house into an agricultural building even if the humans move out...The starting point for considering the permitted use of a new structure is the character of the building for which permission has been given... (section 75(3)): 'the permission shall be construed as including permission to use the building for the purpose for which it is designed.'*

5.1.5 In conclusion it was found that given the layout and appearance the building was not agricultural and was not designed as such.

5.1.6 This is relevant to this application because the building has a clearly residential appearance and has been constructed to a standard that could provide comfortable living accommodation rather than reflecting what would be considered as an agricultural use. Whilst the external appearance of the building and the materials used in its construction have not been substantially altered from the approved scheme, the building has been built to a residential standard and has a residential appearance. The Applicant has acknowledged within the planning statement that the insulation, electrics, and foul water mains have already been implemented to a residential standard. The Applicant has tried to justify the level of insulation stating that heating, the hot water boiler and bathroom were needed to keep the fruit at the correct temperature and washing. However, the building features a number of waste and water pipes within multiple rooms, that would go over and above what would reasonably be considered necessary for an apple storage barn. Likewise, whilst it is acknowledged that the apples would need to be kept at an even temperature, the Royal Horticultural Society suggest that temperatures should be between 2.8 degrees Celsius and 7 degrees Celsius. Full residential type insulation is unlikely to be necessary to maintain these temperatures and therefore, the building, given its layout and appearance, is not agricultural.

5.1.7 The 'Welwyn' case relates to a permission to construct a hay barn which was restricted by a condition to ensure that it was only used for the storage of agricultural products. A similar condition applies to the barn permission (20/00574/FUL). Condition 3 of that permission states that the building shall only be used for the

purposes related to or ancillary to agricultural operations occurring at the application site. The completed building in the Welwyn case had the external appearance of a hay barn but was fitted out internally as a dwelling. A certificate of lawfulness after the relevant four-year period was refused on the basis that the building was not a dwellinghouse. The Secretary of State allowed the appeal but found that the building had always been intended to be used as a dwellinghouse, with the Applicant deliberately deceiving the Local Planning Authority (LPA). The matter went to the Supreme Court who held that the construction of the building had been begun and completed as a dwelling and not as the barn originally permitted. Therefore, it was found that there had been no change of use from the permitted barn to the residential use.

- 5.1.8 The relevance of the abovementioned case to this proposal is that from the exterior of the building the development had largely been built in accordance with the plans and therefore, would appear as the development as approved. However, it is clear from the internal layout, the level of facilities and the finish of the interior including features such as a fully equipped kitchen, laminate style flooring, skirting boards and window ledges, that the building was not intended to function as an agricultural building internally. There is also a sofa, coffee table, rugs and doormats inside the building which is more akin to a residential use rather than agricultural. There is a small amount of agricultural and equestrian equipment, being stored in the building but this was being stored on cardboard boxes in what appeared as an attempt to protect the flooring, something which is not common practice in a barn. Likewise, site visit photographs also show that residential items were likely being stored as labels on storage boxes contain labels such as 'boys toys', 'Lego' 'Make-up' and 'cricket'.
- 5.1.9 It is claimed that the kitchen was bought on sale for £150. The Applicant has advised that there is a receipt that could be submitted, albeit this just lists the sale as 'sale item'. Therefore, this could be for any of the individual items and doesn't demonstrate it is for the kitchen as a whole. Regardless of the cost, the fully equipped residential kitchen is over and above what would reasonably be required for an agricultural use and would no doubt take up much needed space within an agricultural unit. On the basis of this evidence, the building as constructed is considered a dwellinghouse.
- 5.1.10 The above is further supported by Building Control records which show a photograph demonstrating that the double doors to the kitchen diner and the wall separating the living room and diner were in place at the construction stage. This point also goes back to the 'Sage' case of the building not being designed for an agricultural purpose. Therefore, the building has not been constructed in accordance with the grant of planning permission, despite the external appearance and therefore, there is no extant permission at the site.
- 5.1.11 The Judge in the 'Welwyn' case went on to say that *'Even assuming that it could be shown that the development of a hay barn was 'begun' with section 56(2), this cannot assist on the essential question whether the building as constructed and completed was a barn, so that the only breach was in its use as a dwellinghouse contrary to its stated purpose... Even if the planning permission were to be treated as having been initiated or begun, it was not implemented in any further or substantial respect; so the building constructed was not a building which could be regarded as having any permitted use.'* The Supreme Court therefore held that there was no change of use and that there was a public policy reason to disapply the time limit in cases of deliberate concealment.
- 5.1.12 In relation to this application, it would appear that the permission for the barn had not been implemented any further than the construction of the exterior walls or in any

substantial respect. Therefore, the building has no permitted use and as such a change of use cannot be applied.

5.1.13 The last case is 'Kwik-Save' related to a permission for the erection of a petrol station, car wash, car showroom and tyre fitting bay. The 20,000 ft floorspace showroom was erected and five cars brought to the showroom for sale, with advertising in two newspapers. The showroom operated for one month before the operation ceased. It was then used as a retail discount store. An appeal against an enforcement notice alleging a change of use from use as vacant land for the purpose of a retail discount store, relied on the permitted development order, which at that time enabled a change of use of premises from 'use as a shop for the sale of motor vehicles' to use as a shop for any purpose.

5.1.14 The appeal was dismissed, with the Inspector holding that the use '*amounted to no more than a token use of the appeal premises as a shop for the sale of motor vehicles, so minimal as to be of no planning significance*'. *In a court challenge the Claimant accepted that the use was 'a device in order to bring themselves within the terms of the order'. The Divisional Court found that 'the very fact that a device was resorted to by the Appellants makes me suspect the use to which it is said and the land was put. The Inspector and the Secretary of State found that it was de minimis on the facts. I would not disagree with that, and in my judgement if a use is a de minimis use it is not a use within the Order.'*

5.1.15 The Court of Appeal agreed and set out three questions of mixed law and fact:

- 1) Was there in fact a use for the sale of motor vehicles?
- 2) If there was, was it minimal?
- 3) If minimal, should it be disregarded?

The Judge found the answer to all three questions to be 'yes' and found that the question of whether the use was material would be unhelpful and misleading. Based on this judgement it is for the decision maker to determine the answers to the three questions set out above.

5.1.16 In respect of the use of the building for apple storage purposes, it is necessary to apply the three-stage test in 'Kwik-Save'. The Case indicates that it is permissible for a decision-maker to ask whether an alleged use of land or a building is a 'device' in order to achieve an 'advantage' in the planning system. In this case that 'advantage' would be to enable an application for a change of use of an existing building in circumstances where the proposed use is unlikely to have attracted planning permission in the first place.

1. As a matter of fact, was there an apple storage use

5.1.17 Building Control records show that the barn was still under construction in November 2020. Therefore, the first harvest in which the barn could reasonably have been put into use is 2021. The Applicant acknowledges in an email dated 9 February 2023 that the harvest occurs between August and October and that as of February 2023 no apples or other fruit was being stored in the building, suggesting that the barn is not in use for storing apples for a large part of the year. The applicant also refers to a fruit fly issue in 2021 where they decided to split the internal storage room, but soon realised the rooms were too small for purpose, again suggesting the use was for a limited time only. On a recent Enforcement visit (18 February 2023) small items of agricultural and equestrian equipment were being stored in the building, with cardboard being used to protect the flooring. The Applicant has also provided a video of himself mulching apples outside the building, with a machine that can be seen to

be stored within the building. Comments have also been made in relation to the sale of apples and Cider as well as the purchase of new apple trees, although only evidence of the tree purchase has been provided and not any sales of the apples or cider.

- 5.1.18 Whilst the apple mulching that occurred outside the building offers little by way of what occurs inside the building and that it would appear the building was designed as a dwelling from the outset, given the presence of the agricultural equipment inside the building it can be accepted that there has been an apple storage or associated use that has occurred within the building. However, it would need to be determined if that use was minimal.

2. If so, was it minimal

- 5.1.19 As discussed above, the evidence submitted with the application would suggest that the storage of fruit was minimal due to the length of time apples were being stored and due to it quickly being realised that the rooms were '*far too small*' for the processing activities. Likewise, the amount of agricultural related equipment inside the building is minimal and is stored in a manner that does not suggest a regular agricultural use i.e., protection of the flooring. Also, the limited time of two harvests that the building could have been put into use is also somewhat minimal. On this basis the answer is yes, the use was minimal.

3. If so, should it be disregarded?

- 5.1.20 Given that the use of the building was minimal, and it was clear from the offset that the building had been designed as a residential building for the reasons outlined above, then the use should be disregarded. It would appear from the evidence and submission that the use of the building has been used as a device in order to achieve an advantage in the planning system. For these reasons the building is unauthorised because it has been found to be a dwelling house rather than an 'apple storage barn' and there has been no agricultural use when considering the tests set out in 'Kwik-Save'. Therefore, it is not reasonably open to the Council to grant planning permission for a change of use.

Conclusion

- 5.1.21 The above assessment against the relevant Case Law concludes that any alleged use of the building for apple storage purposes was minimal. Furthermore, the building as constructed was not an 'apple storage barn'. Therefore, on the basis of the Case Law the Council cannot reasonably approve an application for a permission for a 'change of use' of a building where the construction of the building itself is unauthorised and where there has been no agricultural use prior to a residential use. To do so would set an undesirable precedent and raise issues for consideration e.g. the weight which the Council applies to the evidence should any comparable case come before the Council for determination; the weight to which the Council applies to cited case law as 'material considerations'; the legal rule of consistency in planning (administrative) decision making.
- 5.1.22 Given that the application cannot be reasonably granted on the basis of the application that has been submitted, it is not necessary for an additional assessment considering the suitability of a change of use at the site to be outlined within this report.

## 6. ANY RELEVANT SITE HISTORY

- **FUL/MAL/17/00736**– Proposed construction of a new detached single storey dwelling. Application withdrawn.
- **AGR/MAL/17/01043** – Prior notification for permeable hardstanding, with edging stones. application refused 12.10.2017.
- **DD/MAL/17/01060** – T1 - Elm - Fell. T2 - Wild Pear - Fell. T3 - Wild Pear - Fell. Can works proceed under 5 day D&D (5 Day Notice). Approved 16.10.2017
- **18/00280/FUL** - Construction of an apple storage barn. Approved 23.05.2018
- **18/00839/FUL** - Change of use of land to equestrian and erection of building to be used for storage of agricultural machinery and stabling of six horses. Approved 20.06.20219
- **20/00463/WTPO** - G1 Prunus Spinosa - Remove strip 1m wide by approx. 3.5m long. Approved 01.07.2020
- **20/00345/FUL** - Variation of condition 2 and 8 on approved planning permission 18/00839/FUL (Change of use of land to equestrian and erection of building to be used for storage of agricultural machinery and stabling of six horses). Approved 10.07.2020
- **20/05040/DET** - Compliance with conditions notification 18/00280/FUL (Construction of an apple storage barn) Condition 3 – Materials. Discharged 23.07.2020
- **20/00574/FUL** - Variation of condition 2 on approved planning permission 18/00280/FUL (Construction of an apple storage barn). Approved 05.08.2020
- **20/00733/FUL** – An equestrian arena to ride in the wet winter months. The arena is to be made of an equestrian sand mix. Approved 12.11.2020
- **20/05055/DET** - Compliance with conditions notification 21/01240/VAR (Variation on condition 2 and removal of condition 8 on approved planning application 21/00628/FUL (Proposed construction of a single storey self build live/work dwelling)) Condition 3 - Materials, Condition 4 - Landscaping, Condition 5- Boundary Treatment, Condition 6 - Cycle Parking, Condition 7 - Parking Spaces, Condition 8 - Surface Water Drainage, Condition 9 - Foul Drainage, Condition 15 - Biodiversity Strategy, Condition 16 - External Lighting. – Part discharged part refused 25.08.2022
- **21/00628/FUL** – Proposed construction of a single storey self-build live/work dwelling. Approved 15.10.2021
- **21/01240/VAR** - Variation on condition 2 and removal of condition 8 on approved planning application 21/00628/FUL (Proposed construction of a single storey self build live/work dwelling) Approved 06.04.2022
- **23/00266/VAR** - Variation of condition 2 (plans) and removal of condition 13 (dormer windows) on approved Planning Permission 21/01240/VAR (Variation on condition 2 and removal of condition 8 on approved planning application 21/00628/FUL (Proposed construction of a single storey self-build live/work dwelling)). Pending Consideration

## 7. CONSULTATIONS AND REPRESENTATIONS RECEIVED

### 7.1 Representations received from Parish/Town Councils

Name of Parish / Town Council	Comment	Officer Response
Mayland Parish Council	Object – <ul style="list-style-type: none"> <li>• Outside the settlement boundary</li> <li>• Design is out of</li> </ul>	<ul style="list-style-type: none"> <li>• It is not relevant to address this matter at this stage because the application cannot</li> </ul>

Name of Parish / Town Council	Comment	Officer Response
	<p>keeping with the surrounding area</p> <ul style="list-style-type: none"> <li>• Impact on neighbouring amenity</li> <li>• The Orchard is no longer at the site</li> </ul>	<p>be determined on the basis it is not a change of use as applied for.</p> <ul style="list-style-type: none"> <li>• The design was previously found acceptable as part of the previous permission.</li> <li>• The loss of agricultural activity would be addressed as part of a relevant application.</li> </ul>

## 7.2 Statutory Consultees and Other Organisations

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
Natural England	A Habitats Regulation Assessment should be undertaken in respect of the Essex Coast RAMS	<ul style="list-style-type: none"> <li>- If the application were to be approved a S106 agreement securing the contribution would be required.</li> </ul>
Essex Wildlife Trust	No response received at the time of writing this report	Noted, as a non-statutory consultee EWT's comments are not essential to the determination of the application.

## 7.3 Internal Consultees

Name of Internal Consultee	Comment	Officer Response
Environmental Health	No objection	Noted
Arboricultural Consultant		
Ecology	<p>No objection subject to securing:</p> <ul style="list-style-type: none"> <li>- A financial contribution towards Essex Coast RAMS</li> <li>- Biodiversity mitigation and enhancement measures.</li> </ul>	Noted. If the application were to be approved these matters could be secured by a condition.

## 7.4 Representations received from Interested Parties

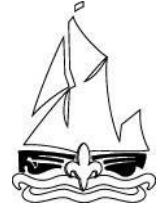
7.4.1 1 letter of objection has been received. The reasons are summarised in the table below:

Objecting Comment	Officer Response
<ul style="list-style-type: none"><li>- Contrary to Policy E4</li><li>- The site is not suitable for further residential accommodation contrary to Policies H7 and S8</li><li>- Introduction of residential paraphernalia would be inappropriate at this site</li><li>- Unsuitable access including for pedestrians</li><li>- This is not an infill site contrary to Policy H4</li><li>- The building could be repurposed for other uses such as the stable being which has not yet been built on the site.</li><li>- There are no special circumstances to approve the application.</li></ul>	<ul style="list-style-type: none"><li>- These points are noted. However, it is not relevant to address these matters at this stage because the application cannot be determined on the basis it is not a change of use as applied for.</li></ul>

## 8 REASON FOR REFUSAL

1 Based on the information submitted and available to the Council, and having regard to the design, appearance, layout, character and purpose of the application building, it has not been demonstrated that the building as constructed constitutes an 'apple storage barn' as authorised by the grant of planning permission 20/00574/FUL. Furthermore, it has not been demonstrated that the use of the building for agricultural purposes was more than de minimis and therefore, the use should be disregarded. Consequently, the building is unauthorised development, and the Council cannot, having regard to relevant Case Law, approve an application for a permission for a 'change of use' of a building where the construction of the building is unauthorised.

This page is intentionally left blank



**REPORT of  
DIRECTOR OF SERVICE DELIVERY**

---

to  
**SOUTH EASTERN AREA PLANNING COMMITTEE  
25 MAY 2023**

<b>Application Number</b>	<b>23/00079/FUL</b>
<b>Location</b>	Land between 45 Steeple Road and 1 Mill Road, Mayland
<b>Proposal</b>	Construction of a two storey 4-bedroom dwelling house, access and landscaping
<b>Applicant</b>	Mr and Mrs Paul Lee
<b>Agent</b>	Mr Antony Cussen
<b>Target Decision Date</b>	2 June 2023 (EOT agreed)
<b>Case Officer</b>	Lisa Greenwood
<b>Parish</b>	<b>MAYLAND</b>
<b>Reason for Referral to the Committee / Council</b>	Member Call In – Councillor M W Helm Policies S1, D1, T2

**1. RECOMMENDATION**

**APPROVE** for the reasons as detailed in Section 9 of this report.

**2. SITE MAP**

Please see below.

**Land between 45 Steeple Road and 1 Mill Road**  
**Mayland**



 <p><b>Copyright</b>          For reference purposes only.          No further copies may be made.          This map is reproduced from Ordnance Survey          material with the permission of Ordnance Survey on          behalf of the Controller of Her Majesty's Stationery          Office © Crown copyright.          Unauthorised reproduction infringes Crown copyright          and may lead to prosecution or civil proceedings.          Malden District Council 100018588 2014</p>	Scale:	1:1,250
	Organisation:	Malden District Council
	Department:	Department
	Comments:	Essex
	Date:	17/03/2023
<a href="http://www.malden.gov.uk">www.malden.gov.uk</a>	MSA Number:	100018588

### **3. SUMMARY**

#### **3.1 Site description**

3.1.1 The application site is located on the western side of Mill Road, which is accessed off Steeple Road to the south. Mill Road lies east of the main settlement of Mayland, with the application site positioned adjacent to the settlement boundary, which runs along the southern site boundary. The surrounding area is a mix of residential and undeveloped land, with an allocated employment site to the west. Directly south of the site are terraced bungalows. A pedestrian and vehicle access to the rear of the bungalows extends this boundary, immediately separating the site from the private amenity spaces associated with these dwellings. To the north of the site is a detached dwelling, no.1 Mill Road, 'Fidlers Rest'. To the east of the site, beyond the highway, and to the south east, beyond the highway, is undeveloped land / open countryside.

3.1.2 The site itself measures approximately 0.13 hectares in area and is roughly rectangular in shape. The site comprises of grassland, established trees and vegetation, and has been cleared to some extent in recent months. The site is bound to the north and south by existing close boarded timber panel fencing, and at the frontage by security fencing. Trees are retained at the western boundary and have been felled to some extent at the frontage.

#### **3.2 The Proposal**

3.2.1 Planning permission is sought for the construction of a two storey 4- bedroom dwelling house, together with access and landscaping.

3.2.2 At ground floor level, the dwelling will provide for a study, WC, hallway, lounge, plant room, kitchen / diner, and a utility room. At first floor level, the dwelling will provide for 3no. bedrooms, all served with en-suite bathrooms, landing area, and a dressing room to serve the master bedroom.

3.2.3 At ground floor level, the dwelling is proposed to measure between approximately 6.3 and 12.483 metres in width and 6.3 and 14.5 metres in depth. A porch is proposed at the front elevation. The first-floor front elevation is to be set back from the ground floor. The first floor proposes to measure between approximately 3.6 and 12.5 metres in width and 6.3 and 13.2 metres in depth.

3.2.4 The dwelling proposes to provide for an intersecting / overlaid hip roof, that will measure 7.409 metres to the ridge, and 5.346 metres to the eaves. The walls are to be constructed with stock facing brickwork and cement render, plain interlocking tiles on the roof and the windows and doors are proposed to be finished in UVPC. The boundary treatments would comprise of the existing close boarded and panelled timber fencing and augmented where required. The vehicle access and hardstanding are proposed to be constructed with permeable stone / gravel surfacing.

3.2.5 1 single window, 3 triple windows and 1 door are proposed at the ground floor east (front) elevation, with 4no. triple windows above at the first floor east (front) elevation. Bi-fold doors are proposed at the ground floor south (side) elevation together with 1 double window and 1 door on the ground floor north (side) elevation, with 2 single windows above at the first floor north (side) elevation. 2. double windows and bi-fold doors are proposed at the west (rear) elevation, with 1 single and 3 double windows above at the first floor west (rear) elevation.

- 3.2.6 The dwelling is proposed to be set back from the highway by approximately 20 metres. Parking for 3 vehicles is to be achieved across the frontage. An area of private amenity space is proposed to the rear of the site, and a wildlife pond is proposed adjacent to the rear / western boundary.
- 3.2.7 This application follows previous refusals of planning permission for the erection of 1no. detached dwelling with associated access and landscaping (planning reference 22/00472/FUL), the withdrawal of planning application reference 21/01186/OUT, which was an outline application that proposed the construction of 2no. dwellings at the site, and the refusal of planning application reference 22/00925/FUL, which sought planning permission for the erection of a detached dwelling and associated access and landscaping. Subsequently, the agent and applicant have engaged with the Local Planning Authority (LPA) to discuss a way forward and agree a suitable scheme. It should be noted that a second application for the construction of a 1.5 storey chalet style 4-bedroom dwelling, access and landscaping has also been submitted for consideration to the LPA, and now this South Eastern Area Planning Committee (planning application reference 23/00080/FUL).

### **3.3 Conclusion**

- 3.3.1 The revised scheme has taken into account the concerns raised through the previous reasons for refusal and the advice given from Planning Officers during the pre-application enquiry stage. The proposed dwelling is sited appropriately and separated sufficiently distant from the neighbouring boundaries. There is a clear fenestration hierarchy at the front elevation, and the revised layout and external features reduce any visual impact experienced at the southern elevation.
- 3.3.2 It is acknowledged that neighbour objections have been received with regard to the proposal, and the assessment within this report sets out responses to the concerns. To reduce any potential loss of residential amenity, planning conditions are to be imposed with regard to the windows proposed at the first-floor north elevation to ensure these windows are obscured glazed and non-opening below 1.7 metres, and a construction management plan. There have been no technical objections to the proposal with regards to access, highway safety and parking, residential amenity, ecology, trees and landscaping, and flood risk and drainage
- 3.3.3 For the reasons aforementioned, it is therefore 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
- 55-59 Planning conditions and obligations
- 60-80 Delivering a sufficient supply of new homes
- 104-113 Promoting sustainable travel
- 119-125 Making effective use of land
- 126-136 Achieving well designed places

- 152-173 Meeting the challenge of climate change, flooding and coastal change
- 170-183 Conserving and enhancing the natural environment

## 4.2 Maldon District Local Development Plan (2017)

- S1 Sustainable Development
- S2 Strategic Growth
- S8 Settlement Boundaries and the Countryside
- D1 Design Quality and Built Environment
- D2 Climate Change and Environmental Impact of New Development
- D5 Flood Risk and Coastal Management
- H2 Housing Mix
- H4 Effective Use of Land
- N1 Green Infrastructure Network
- N2 Natural Environment and Biodiversity
- T1 Sustainable Transport
- T2 Accessibility
- I1 Infrastructure and Services
- I2 Health and Wellbeing

## 4.3 Relevant Planning Guidance / Documents:

- Vehicle Parking Standards (2018)
- National Planning Policy Guidance (NPPG)
- Maldon District Design Guide (MDDG) (2017)
- Local Housing Needs Assessment (2021)

## 5. MAIN CONSIDERATIONS

### 5.1 Principle of Development

- 5.1.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 (PCPA 2004), Section 70(2) of the Town and Country Planning Act 1990 (TCPA1990), and paragraph 47 of the NPPF (2021) require that planning decisions are to be made in accordance with the Development Plan (LDP) unless material considerations indicate otherwise. In this case the Development Plan comprises of the adopted Maldon District Local Plan 2014-2029 (The Local Development Plan or LDP).
- 5.1.2 Policy S1 of the LDP states that “*When considering development proposals the Council will take a positive Policy S1 of the LDP states that ‘When considering development proposals the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF’* and apply a number of key principles in policy and decision making set out in the Policy.
- 5.1.3 Policy S8 of the LDP steers new development towards the existing urban areas. This Policy does allow for development outside the rural areas where the intrinsic character and beauty of the countryside is not adversely impacted upon and provided that it is for specified purposes. These specified purposes do not include new build general residential properties but does allow (m) development which complies with other policies of the LDP. Policy I2 states that suitable types of residential development which cater for the ageing population and support healthy and

independent lives will be provided. Policy H3 also supports the provision of housing for 'specialist' needs.

- 5.1.4 As per Paragraph 74 of the NPPF (2021), the Council as the LPA for the Maldon District is expected to "identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of 5 years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than 5 years old." To this end, Maldon District Council prepares and publishes a 5 Year Housing Land Availability Report, annually, following the completion of the development monitoring activities associated with the LDP 2014-2029 plan monitoring period of 1 April to 31 March.
- 5.1.5 Work is being carried out by the Council in reviewing the suitability of the methodology used in calculating its 5 Year Housing Land Supply (5YHLS) through its 5YHLS Working Group established in August 2022. The group has yet to conclude the work and present its recommendations to Council. As such, the methodology used for calculating the housing land supply at this point in time is therefore the same as was used in 2021/2022. The last published position was 3.66 years in April 2022. On 30 March 2023, an Officer statement was delivered to Council advising that the 5YHLS, as of 30 March 2023, calculated using the same methodology as 2021/2022 stood at 5.1 years: an increase of 1.44 years. The statement to Council was caveated that this updated supply was still subject to the required further checks and verification activities associated with the methodology, which could mean it either increases or decreases by the time it is presented to Council for approval, in line with the Council decision taken on the 23 February 2023 that the annual land supply statement must now be reviewed and agreed by Council prior to publication.
- 5.1.6 Where an LPA is unable to demonstrate that it has a 5YHLS, the presumption in favour of sustainable development will apply; this is known as the 'Tilted Balance'. This position is set out in paragraph 11d, together with its footnotes, of the NPPF (2021) which states:

*"For decision making this means:*

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

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

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

*'Footnote 8 This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74).*

- 5.1.7 At the heart of the NPPF is a presumption in favour of sustainable development (the 'presumption') which is central to the policy approach in the Framework, as it sets out the Government's policy in respect of housing delivery within the planning system and emphasises the need to plan positively for appropriate new development. The NPPF replaces Local Plan policies that do not comply with the requirements of the NPPF in terms of housing delivery. In addition, leading case law assists the LPA in its application of NPPF policies applicable to conditions where the 5YHLS cannot be

demonstrated (Suffolk Coastal DC v Hopkins Homes and Richborough Estates v Cheshire East BC [2017] UKSC 37).

- 5.1.8 It is necessary to assess whether the proposed development is 'sustainable development' as defined in the NPPF. If the site is considered sustainable then the NPPF's 'presumption in favour of sustainable development' applies. However, where the development plan is 'absent, silent or relevant policies are out of date', planning permission should be granted 'unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or that specific policies in this Framework indicate development should be restricted'.
- 5.1.9 On the basis of the above, the Council's official 5YHLS figure stands at 3.66 years and therefore, having regard to the annually published figure, the Council cannot currently demonstrate a 5YHLS. However, the information in paragraph 5.1.5 above reflects that the Council have clearly adopted a more proactive approach to housing delivery by approving housing developments outside the settlement boundaries, in addition to both within settlement boundaries and on the Strategic sites where they can be deemed sustainable. The likelihood of the forthcoming published 5YHLS figure negatively deviating significantly from the five-year mark is considered unlikely given that the figures were last calculated one day prior to the end of the monitoring period. Therefore, whilst the tilted balance still applies, it is reasonable to determine that the 5YHLS is now more level than it was previously. Therefore, the Council acknowledge the importance of delivering homes given the backdrop of a national shortage of housing, and particularly appropriate homes for the residents of the District through a positive approach to decision making, noting also that the 5YHLS is not a ceiling for approving housing development. However, this increase in supply allows the Council to be less constrained in our consideration of the most sustainable developments and of those that carry the greatest benefits to ensure that developments are sustainable for the District.
- 5.1.10 In judging, therefore, whether a residential scheme should be granted, it is necessary to consider the weight attributed to the planning benefits which the proposal offers in contributing towards and maintaining a healthy and consistent 5YHLS particularly in light of the currently official shortfall, against the adverse impacts identified (if any) arising from the proposal in relation to the policies contained within the NPPF and relevant policies in the Local Plan.
- 5.1.11 There are three dimensions to sustainable development as defined in the NPPF. These are the economic, social and environmental roles. The LDP through Policy S1 re-iterates the requirements of the NPPF Policy S1 allows for new development within the defined development boundaries. The presumption in favour of sustainable development although triggered by the tilted balance, does not change the statutory status of the development plan as the starting point for decision making. However, given the balanced nature of the 5-year housing land position at this point in time, together with the published 5 year housing land figure as being less than 5 year supply of deliverable housing, sites outside of the defined development boundaries could still be judged to be 'sustainable development' through the three dimension tests of the NPPF'. The LPA are, however obliged to exercise its judgement as to whether to grant planning permission having regard to any other relevant planning policies and merits of the scheme. Paragraph 79 of the NPPF states that:

*"To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will*

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

- 5.1.12 The application site is located just outside of the defined settlement boundary of Mayland, an area that is classified as one of the ‘larger villages’ within the District, as detailed within Policy S8 of the LDP. ‘Larger villages’ are defined as “settlements with a limited range of services and opportunities for employment, retail and education. They serve a limited local catchment and contain a lower level of access to public transport.’
- 5.1.13 With regard to the service and facilities within Mayland, it is noted that the site is located approximately 2.4km away from Mayland’s parade of shops, where there is also a chemist and a doctor’s surgery. Closer to the application site, along Steeple Road, there is a petrol station with a convenience store and the Mayland Mill former public house, which now operates as a restaurant. With regard to public transportation, the nearest bus station to the site is sited around 150 metres away. The bus service is limited, albeit this is typical in rural locations. Paragraph 105 of the NPPF (2021) states that *“sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making.”*
- 5.1.14 In assessing the accessibility credentials of the site, consideration should be given to applications for residential development at the Whitecap Mushroom Farm (planning reference 16/00224/OUT) and Mayflower Nursery (planning application reference 18/00833/FUL), both of which are in close proximity to the application site (approximately 100m and 200, further north). Although the Whitecap Mushroom Farm application was dismissed at appeal in 2018, the accessibility of the site to public transportation, services and facilities was not a reason for dismissal. Similarly, the application for the erection of residential development at Mayflower Nursery, although also refused, was not considered to be unacceptable with regard to accessibility. The sites were both considered to benefit from some sustainability credentials.
- 5.1.15 On balance, whilst the application site is outside of the settlement boundary for Mayland which is a ‘larger village’, it is considered that the proposed development is acceptable with regard to accessibility to local amenities and alternative and sustainable modes of transport. Giving appropriate weight to the guidance in the NPPF (2021), the proposal is therefore acceptable in this regard.
- 5.1.16 The proposal is an infill development to which Policy H4 of the LDP acknowledges that backland and infill development will be considered on a site-by-site basis to take into account local circumstances, context and the overall merit of the proposal. Backland and infill development will be permitted if a closed list of criteria are met, as follows:
- “1) *There is a significant under-use of land and development would make more effective use of it;*
  - 2) *There would be no unacceptable material impact upon the living conditions and amenity of nearby properties;*
  - 3) *There will be no unacceptable loss of land which is of local social, economic, historic or environmental significance; and*

- 4) *The proposal will not involve the loss of any important landscape, heritage features or ecology interests."*

5.1.17 With respect to criteria 1, the site comprises of grassland, and the Design and Access Statement submitted to support the proposal confirms that the site was previously used as domestic garden land, belonging to no.1 Mill Road. Whilst the proposal would make a more intensive use of the land, the site is not under-used. Neighbour comments have been received with regard to fly tipping at the site, and the site is currently vacant and neglected, the proposal would make a more effective use of the land as well as improving the visual amenities of the area. Criteria 2 will be discussed at Section 5.4, and neighbour objections have been taken into account; however, the proposal would not result in a harmful impact on neighbouring sites. In relation to criteria 3 and 4, an objection has been raised with regard to the lack of an arboricultural report and the clearance of the site.

5.1.18 As is set out at Paragraph 5.6 and 5.8 of this report, the proposal has been reviewed by both the Council's Arboricultural and Ecological Consultants and is considered to be acceptable. It should be noted that the Arboricultural Consultant has a working knowledge of the site, having commented on the previous applications. The proposal would not cause any harm to social, economic, heritage or ecological interests at the site and therefore there would be no conflict with these criteria. For the reasons aforementioned, the principle of development cannot be reasonably objected to, and any neighbour objections with regard to the fact that the proposed development is located outside of the settlement boundary have been overcome, and no objection has been received in this regard from the Parish Council.

## **5.2 Housing Need and Supply**

5.2.1 Recent case law, as noted above and having regard to S38 (6), restates the primacy of the statutory development plan as the starting point in the determination of planning applications. However, in respect of the Council's published land supply position, the NPPF states that Local Authorities should consider applications for new dwellings in the context of the presumption in favour of sustainable development, and the LDP policies in relation to the supply of housing should not be considered to be up-to-date. As a result, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole, or specific policies in the NPPF indicate that development should be restricted.

5.2.2 Whilst the LDP, based on the published figures, carries limited weight at present due to the lack of a 5YHLS and consequent impact on its housing delivery policies in particular (including those policies which define settlement boundaries), the NPPF is clear that housing should be provided to meet an identified need.

5.2.3 The Housing Needs Assessment (HNA) (2021) is an assessment of housing need for Maldon District as a whole, as well as sub-areas across the District which are considered alongside the housing market geography in this report. The HNA is wholly compliant with the latest NPPF (2021) and Planning Practice Guidance and provides the Council with a clear understanding of the local housing need in the District and demographic implications of this, the need for affordable housing, the need for older persons housing, the need for different types, tenures and sizes of housing, the housing need for specific groups and the need to provide housing for specific housing market segments such as self-build housing.

5.2.4 The proposal seeks to provide for 1 no. 4 bedroom dwelling. The Maldon District Local Housing Needs Assessment (2021) concludes that the District has a need for

smaller dwellings, with the biggest requirement for 3no. beds (40-50%), followed by 2no. beds (25-35%). Therefore, as the proposal is for 1no. 4 bedroom dwelling, the development would not contribute to the Council's most required housing need.

### **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. It should be noted that good design is fundamental to high quality new development and its importance is reflected in the NPPF.

5.3.2 The basis of Policy D1 of the 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;*
- b) Height, size, scale, form, massing and proportion;*
- c) Landscape setting, townscape setting and skylines;*
- d) Layout, orientation, and density."*

5.3.3 Similar support for high quality design and the appropriate layout, scale and detailing of development is found within the MDDG (2017). In addition, Policy H4 requires all development to be design led and to seek to optimise the use of land having regard, among other things, 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 of the surrounding area; is of an appropriate scale and design that makes a positive contribution to the character of the surrounding area and does not involve the loss of any important landscape, heritage features, or ecology interests.

5.3.4 The application site fronts onto Mill Road to the east. The dwellings along Mill Road are generally positioned in alignment, however, there is a site to the north which consists of many non-residential outbuildings which extend west past the main building line.

5.3.5 As stated, the site has been the subject of a number of planning applications. The most recent application reference 22/00925/FUL was refused for 2no. reasons, the first reason owing to the design, scale, bulk and height of the proposed dwelling, and the fact that the development would result in an incongruous and dominant development which would cause significant and undue harm to the character and appearance of the surrounding area. Since this time, the applicant has engaged with the LPA and received pre-application advice to guide, without prejudice, a subsequent application.

5.3.6 The design of the proposed dwelling is considered to have responded positively to the comments of the informal advice and the previous reason for refusal.

5.3.7 Turning firstly to the siting of the proposed dwelling, this has now been brought forward and is relatively aligned with the built form to the north. Furthermore, the dwelling is now sited more centrally within the plot and is separated from the shared boundary to the north by in excess of 3 metres, and in excess of 3.2 metres from the shared boundary to the south. The proposed dwelling is also separated from the flank wall of the neighbouring dwelling to the north by approximately 6 metres, and from

the flank walls of the neighbouring dwellings to the south by approximately 30 metres. This is considered to be a welcome response, as the previously refused scheme was set back much further into the site and was separated by just 1 metre from the shared boundary to the south. The site benefits from a generous plot, and the siting of the proposed dwelling no longer renders the site feeling cramped or overdeveloped.

- 5.3.8 The building has been designed in an 'L' shaped plan form, which is of a similar design to the dwelling to the north. The dwelling now has a clear fenestration hierarchy at the front elevation. The entrance to the dwelling is proposed at the front elevation, and the dwelling is now of a more coherent design, without a mix of mismatched roof designs, as per the previously refused scheme. Such factors, when presented with a clear fenestration hierarchy, provide for a legible design. There are no windows proposed at the first floor south (side) elevation to eliminate any perception of overlooking given the direct face-on relationship with the rear gardens of nos. 53-57 Steeple Road. The layout of the proposed dwelling, together with the separation distances proposed, and an external chimney feature, the outlook for the residents at Steeple Road would not be compromised and is now considered to have improved, particularly as the large expanse of a brick flank wall proposed at the previously refused scheme has been removed. Whilst an objection has been received with regard to the height of the proposed dwelling, it is considered that the intersecting hipped design of the roof reduces this impact on the character of the area, and individually. Furthermore, there would be no material loss of light to the dwelling itself, nor overdominance from the proposed dwelling on neighboring amenity.
- 5.3.9 The proposed materials used in the construction of the dwelling are considered to be typical materials to be used for a dwelling in this location, and therefore there is no objection raised to the materials proposed. Should planning permission be forthcoming, a suitably worded planning condition is to be imposed requiring samples / high quality photographs and full specifications of the materials to be provided to the LPA to ensure that they are of an appropriate quality.
- 5.3.10 On balance, the proposal is considered to have overcome the previous concerns raised by officers and the proposal is now acceptable in this regard. As the impact of the dwelling on the character and appearance of the area is no longer considered to be harmful, a landscaping condition can be secured by condition. The proposal therefore accords with Policies D1 and H4 of the LDP (2017), the MDDG (2017), and the policies and guidance contained in the NPPF (2021).

## **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 closest neighbours to be potentially impacted by the proposal are the neighbours to the north, at no.1 Mill Road, and to the south, at nos. 53-57 Steeple Road.
- 5.4.3 Turning firstly to the neighbour located to the north, in terms of a loss of privacy, 2no. windows are proposed at the first-floor side elevation, and 1no. double window and 1no. door is proposed at the ground floor side elevation fronting the boundary shared with this neighbour. The first-floor windows will serve 2no. en-suite bathrooms, and the window at ground floor level will serve a utility room. The door will provide access to a plant room.

- 5.4.4 An existing close boarded fence (approximately 1.8 metres in height) is to be retained, and this can be secured by the imposition of a condition. By virtue of the height of the fence, and the fact that the window and door do not serve habitable rooms, this will provide sufficient screening at ground floor level. The door and double windows will therefore not result in overlooking to a level that is considered harmful. With regard to the windows at the first floor, as stated, they will serve 2no. en-suite bathrooms. In order to ensure that neighbour amenity is protected, a condition shall be imposed to ensure that the glazing is obscured, and that the windows are of a non-openable design with the exception of a top hung fanlight (which shall be at least 1.7m above internal floor level).
- 5.4.5 With regard to any potential loss of privacy to the rear of no.1 Mill Road, the proposed dwelling is orientated to the south west of this neighbour. Views from the rear of this dwelling will not be directly of the neighbouring garden. Furthermore, this arrangement is not dissimilar to the arrangement of no.1 Mill Road and its immediate neighbour to the north and will be no more harmful in terms of overlooking and is acceptable in this regard.
- 5.4.6 With regard to the impact on the neighbours to the south at nos.53-57 Steeple Road, there are no windows proposed at the first-floor side elevation. Bi-fold doors are proposed at the ground floor side elevation however, a close boarded timber panel fence provides screening at this boundary and this is to be retained. The proposed dwelling is also separated from these neighbours to the south by circa. 30 metres. Owing to the orientation of the proposed dwelling, future occupants will also not be afforded direct views of the neighbouring gardens. The proposal is therefore not considered to result in a loss of privacy to these neighbours.
- 5.4.7 Owing to the siting, orientation and separation distances from the proposed dwelling to the neighbouring dwellings to the north (circa 6 metres) and south (circa 30 metres) the proposal will not result in a loss of daylight and sunlight to these neighbours. It is also not considered that the proposal will appear as overbearing.
- 5.4.8 In terms of any potential noise generated by the development, the proposal has been reviewed by the Council's Environmental Health Officer, who raises no objection, but suggests the imposition of a condition with regard to the submission and approval in writing to the LPA of a Construction Management Plan, which will restrict the working hours on site, and the times of deliveries.
- 5.4.9 Whilst the comments received from neighbours have been carefully considered by the LPA, on balance, the proposal has not been found to impact neighbour amenity to a level that could be considered harmful, and any material concerns can be addressed by the imposition of planning conditions.

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

- 5.5.1 Policy T2 of the LDP 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 LDP seeks to include safe and secure vehicle and car parking, having regard to the Council's adopted Parking Standards and maximise connectivity within the development and to the surrounding areas.
- 5.5.2 The access will be taken from Mill Road, where the existing site entrance is located and therefore there are no concerns with such arrangements.

- 5.5.3 The Highways Authority raises no objection, subject to the imposition of conditions regarding the reception and storage of building materials, cycle parking, and the provision, implementation and distribution of a residential travel information pack for sustainable transport, which would be included were planning permission to be forthcoming.
- 5.5.4 The proposed dwelling will provide for 4no. bedrooms, and therefore, 3no. parking spaces are required in order to meet the Council's Vehicle Parking Standards (2018). The Parking Standards states that "the preferred size of a car parking bay is 2.9m x 5.5m." Drawing no.1234/02 shows that 3no. parking spaces that meet the preferred size of a car parking bay can be provided at the frontage, with sufficient space for turning. The proposal is therefore acceptable in this regard.

## **5.6 Private Amenity Space and Landscaping**

- 5.6.1 Policy D1 of the approved LDP requires all development to provide sufficient and usable private and public amenity spaces, green infrastructure and public open spaces. In addition, the adopted MDDG (2017) advises a suitable garden size for each type of dwellinghouse, namely 100m<sup>2</sup> of private amenity space for dwellings with 3+ bedrooms.
- 5.6.2 The proposal seeks to provide in excess of 100m<sup>2</sup> of private amenity space. Therefore, the proposal is in compliance with Policy D1 of the LDP.
- 5.6.3 With regard to tree impact and landscaping, the proposal has been reviewed by the Council's Arboricultural Consultant who notes that there are no significant trees on site that are likely to be impacted. The site is low in quality scrub that will need to be cleared. In response to a neighbour objection in this regard, this supports the reasoning as to why an arboricultural report has not been requested.
- 5.6.4 Notwithstanding this, if planning permission is to be forthcoming, a condition is suggested to ensure a robust soft landscaping scheme is provided. This scheme will include tree and shrub species suitable for the site, offering amenity and wildlife benefit, as well as having sufficient space to develop and be retained in perpetuity thereafter. It is noted that neighbour comments have been received with regard to the clearance of the site, and such comments are addressed at Paragraph 5.8 of this report.

## **5.7 Flood Risk and Drainage**

- 5.7.1 Policy D5 of the LPD sets out the Council's approach to minimising flood risk. Policy S1 of the same Plan requires that new development is either located away from high-risk flood areas or is safe and flood resilient when it is not possible to avoid such areas. Policy D5 of the LDP also acknowledges that all development must demonstrate how it will maximise opportunities to reduce the causes and impacts of flooding through appropriate measures such as Sustainable Drainage Systems (SuDS).
- 5.7.2 The site is entirely within Flood Zone 1 and presents a low probability of flooding.
- 5.7.3 With regard to drainage, the proposal has been reviewed by the Council's Environmental Health Officer, who notes that should planning permission be forthcoming, conditions are required with regard to surface water drainage and foul drainage for the site.

## 5.8 Ecology and Impact on European Designated Sites

- 5.8.1 Paragraph 170 of the NPPF states that '*Planning policies and decisions should contribute to and enhance the natural and local environment by; (amongst other things) minimising impacts on and providing net gains for biodiversity*'.
- 5.8.2 Strategic LDP 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.
- 5.8.3 Policy N1 states that open spaces and areas of significant biodiversity or historic interest will be protected. There will be a presumption against any development which may lead to the loss, degradation, fragmentation and/or isolation of existing or proposed green infrastructure. LDP 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.
- 5.8.4 The application site falls within the 'Zone of Influence' (Zol) for one or more of the European designated sites scoped into the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). This means that residential development could potentially have a significant effect on the sensitive interest features of these coastal European designated sites, through increased recreational pressure etc.
- 5.8.5 The development of 1 no. dwelling falls below the scale at which bespoke advice is given from Natural England (NE). To accord with NE's requirements and strategy advice, an Essex Coast RAMS Habitat Regulation Assessment (HRA) record has been completed to assess if the development would constitute a 'Likely Significant Effect' (LSE) to a European site in terms of increased recreational disturbance. The findings from HRA Stage 1: Screening Assessment, are listed below:

### HRA Stage 1: Screening Assessment

#### Test 1 – the significance test

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

Does the planning application fall within the following development types? Yes, the development is for 1 no. dwelling, and therefore the net increase of dwellings at the site is 1 no. dwelling.

#### Test 2 – The integrity test

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

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

- 5.8.6 As the answer is no, it is advised that, should planning permission be forthcoming, a proportionate financial contribution should be secured in line with the Essex Coast RAMS requirements. Provided this mitigation is secured, it can be concluded that this planning application will not have an adverse effect on the integrity of the named

European sites from recreational disturbance, when considered 'in combination' with other development. NE does not need to re-consult on this Appropriate Assessment.

- 5.8.7 The Essex Coastal RAMS has been adopted. This document states that the flat rate for each new dwelling has been calculated at a figure of £156.76 (2022-2023 figure) and thus, the developer contribution should be calculated at this figure.
- 5.8.8 The applicant has submitted a legal agreement and the relevant checking and monitoring fees to mitigate the impact of the development in terms of RAMS. The agreement has been reviewed by the Council's Legal Services Team and has been found to be acceptable. It is considered reasonable that the required mitigation can be provided.
- 5.8.9 The proposal has been reviewed by the Council's Ecological Consultant, who raises no objection, subject to securing a proportionate financial contribution towards the Essex Coast RAMS, and subject to the imposition of biodiversity mitigation and enhancement measures. The Consultant notes that such measures are necessary to conserve and enhance protected and Priority species particularly nesting birds and Badgers. As the site lies within an Amber Risk Zone for Great Crested Newts, and suitable habitats are present close to the site, it is considered that potential impacts upon GCN are managed under a precautionary method statement for the construction stage, including the storage of materials. This statement should be included in a Construction Environmental Management Plan for Biodiversity (CEMP:Biodiversity). The CEMP should also include the proposed reasonable biodiversity enhancements of bird boxes, and the creation of a wildlife pond, which are recommended in the Preliminary Ecological Appraisal (Plumb Associates, March 2022) to secure net gains for biodiversity. Such measures should be outlined within a Biodiversity Enhancement Strategy and should be secured by a condition of any consent.
- 5.8.10 In addition, the Preliminary Ecological Appraisal (PEA) highlights that the habitat onsite provides some foraging / commuting habitat. With this in mind, if there is any external lighting to be proposed, it is advised that a sensitive lighting scheme is developed to minimise any impacts. This can be secured by the imposition of a condition of any consent.
- 5.8.11 In relation to neighbour objections with regard to the submitted Ecology report being insufficient, and the author's qualifications not being provided. Additional information has been received from the applicant, in the form of a letter from Plumb Associates, dated 15 March 2023. The author of the report, Steve Plumb, confirms his qualifications. holding a BSc (Hons) in Environmental Science and an MSc in Landscape Ecology, Design and Maintenance. Mr Plumb also holds the Lantra Professional Tree Inspection certificate and has been a full member of the Chartered Institute of Ecology and Environmental Management (MCIEEM) since 1995 and a Chartered Landscape Architect (CMLI) in the management and science division since 1996. In addition, Mr Plumb has been Chartered Environmentalist since 2007 and is an Associate of the Arboricultural Association and professionally employed in environmental assessment and management since 1986.
- 5.8.13 The letter confirms that the clearance of the site took place in October 2022, prior to the submission of the current applications. The consultant is not aware of mature trees on borders being removed, unless this is in reference to poor quality hedgerow fronting the property. It is confirmed that a few specimens of trees were larger enough to be considered a specimen (75mm) and provides a 2006 Google earth image, which shows that the area was maintained as a lawn containing few trees and

shrubs at that time. Any trees in situ in 2022, therefore, could only be small and immature.

- 5.8.14 The Consultant confirms that the vegetation was assessed as part of the original PEA and was considered to be of generally low value. It is confirmed that there were no trees on the site that would have been classed higher than Category C – Low value if applying the BS5837:2012 assessment criteria.
- 5.8.15 The letter from the applicant also confirms that the site was cleared outside of bird nesting season (October). It is accepted that bird nesting season usually runs from April – August. Legal protection offered under the Wildlife and Countryside Act 1981 (as amended) only extends to disturbing birds that are actively nesting. The clearance of the application site, therefore, was undertaken with good practice.
- 5.8.16 The letter confirms that whilst the Mayland Nature Reserve is within 300m of the site as suggested, the site is not a statutory Local Nature Reserve or a Local Wildlife Site. The small scale of the proposal means it would not have any direct adverse effect on the ecological significance of the nature reserve.
- 5.8.17 The Consultant visited the site again on 14 March 2023 and confirmed that the scrub has been removed, but the trees on the rear boundary have been retained. At present, there are no features on site that would support any protected or important species.
- 5.8.18 The LPA is satisfied that the information provided is an accurate assessment of the site and accords with the comments also made by the Tree Consultant, particularly referring back to the first refused scheme at the site (planning reference 22/00472/FUL). At this time, the Consultant first visited the site and confirmed that no significant trees will be impacted by the proposal. A landscaping condition was recommended, as is the case with the application the subject of this report. It is therefore considered that the objections received in this regard have been suitably overcome.

## **5.9 Pre-commencement conditions**

- 5.9.1 Pursuant to the Town and Country Planning (Pre-commencement Conditions) Regulations 2018, the LPA must obtain the written agreement of the applicant to the terms of any pre-commencement condition recommended before it can be imposed on any planning permission granted.
- 5.9.2 In this case, a pre-commencement condition is required with regard to the submission and approval in writing received by the LPA.
- 5.9.3 Agreement to this was received via email from the agent for the applicant (dated 28 April 2023).

## **6. PLANNING BALANCE AND SUSTAINABILITY**

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

- 6.2 The key priority within the NPPF, stated at paragraphs 7 and 8, is the provision of sustainable development. This requires any development to be considered against the three dimensions within the definition of 'sustainable development' providing for an economic, social and environmental objective as set out in the NPPF.
- 6.3 Notwithstanding the considerations as contained in those paragraphs, it is incumbent on the LPA, where appropriate to consider, as a matter of general planning judgment, the site specific or scheme specific reasons for refusal. However, it does mean that planning applications submitted for land which is unallocated or located outside defined settlement boundaries, as set out in local plan policies, could no longer be refused on those grounds alone.
- 6.4 In judging whether a residential scheme should be granted, it is necessary to set out the weight attributed to the planning benefits which the proposal offers in making up the current housing land supply shortfall (with reasons), against the harm identified (if any) arising from the proposed development.
- 6.5 With regard to the 3 tests of sustainability, in economic terms, it is reasonable to assume that there may be some support for local trade from the development, and the additional unit may support local businesses within the settlement such as shops and services. This would however be limited given the scale of the proposal. Equally, there is no guarantee that the construction would be undertaken by local businesses, with locally sourced materials. Limited details are provided within the application to this effect. Any economic benefits would therefore be considered nominal.
- 6.6 In social terms the proposal would provide limited assistance in supporting a strong, vibrant and healthy community, as the proposal is for a 4-bedroom dwelling, which makes a negligible contribution to the housing need.
- 6.7 In environmental terms, the proposal is now not considered to have a negative impact on the character and appearance of the area and would not be out of keeping with the built form in the locality.
- 6.8 It is acknowledged that the applicant has sought to overcome the previous reasons for refusal. The tilted balance is engaged, and it is not considered reasonable to recommend the proposal for refusal.

## **7. ANY RELEVANT SITE HISTORY**

- **23/00080/FUL** – Construction of a 1.5 storey chalet style 4-bedroom dwelling, access and landing, application pending.
- **22/00925/FUL** - Application for erection of detached dwelling with associated access and landscaping, application refused on 7 October 2022.
- **22/00472/FUL** – Application for erection of detached dwelling with associated access and landscaping, application refused on 8 July 2022.
- **21/01186/OUT** – To construct 2 new houses with new road access and associated parking, application withdrawn on 1 December 2021.

## **8. CONSULTATIONS AND REPRESENTATIONS RECEIVED**

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

<b>Name of Parish / Town Council</b>	<b>Comment</b>	<b>Officer Response</b>
Mayland Parish Council	No objection, with regard	Noted.

Name of Parish / Town Council	Comment	Officer Response
	to Policies D1 and S1.	

## 8.2 Statutory Consultees and Other Organisations

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
Highways Authority	No objection, subject to the imposition of conditions.	Noted, and discussed at Paragraph 5.5 of this report.
Arboricultural Consultant	No objection, subject to the imposition of a condition securing a robust soft landscaping plan.	Noted, and discussed at Paragraphs 5.6 and 5.8 of this report.
Ecological Consultant	No objection, subject to condition.	Noted, and discussed at Paragraph 5.8 of this report.

## 8.3 Internal Consultees

Name of Internal Consultee	Comment	Officer Response
Environmental Health	No objection, subject to the imposition of conditions re surface water drainage, foul drainage, and a construction management plan.	Noted, and discussed at Paragraphs 5.4 and 5.7 of this report.

## 8.4 Representations received from Interested Parties

- 8.4.1 4 letters were received **objecting** to the application and the reasons for objection are summarised as set out in the table below:

Objection Comment	Officer Response
Site is located outside of the settlement boundary.	Noted, and discussed at Paragraph 5.1 of this report.
Design - scale, bulk and height.	Noted, and discussed at Paragraph 5.3 of this report.
Failed to address concerns of previous applications.	Noted, and discussed throughout this report, but most specifically at Paragraph 5.3 of this report.
Ecology concerns. Report is insufficient. Question re the author's qualifications.	Noted, and discussed at Paragraph 5.8 of this report.
Report fails to reflect the clearance of the site or that there are no trees or hedges. Clearance of the site has failed to allow the LPA to accurately assess the environmental impact of the proposed development.	Noted, and discussed at Paragraphs 5.6 and 5.8 of this report.
Lack of an arboricultural report.	Noted, and discussed at Paragraph 5.6 of this report.

Objection Comment	Officer Response
<p>Impact on residential amenity.</p> <ul style="list-style-type: none"> <li>- Prominent design</li> <li>- Overbearing</li> <li>- Proximity and scale cannot offer sufficient mitigation as proposed and would detract from a reasonable level of residential amenity</li> <li>- Proposed new first floor windows on the north elevation will overlook habitable rooms at Fidler's Rest</li> <li>- Fails to meet infill criteria based on unacceptable impact on living conditions and amenity of nearby properties, lack of an arboricultural report, applicant has failed to demonstrate that the clearance of the site has resulted in an unacceptable loss of land, development continues to have an adverse impact on the landscape.</li> <li>- Impact on health and wellbeing.</li> </ul>	<p>Noted, and discussed at Paragraph 5.4 of this report.</p>
<p>Impact on parking, access and highway safety.</p>	<p>Noted, and discussed at Paragraph 5.5 of this report.</p>

8.4.2 **4** letters were received **in support** of the application however it is noted that 2no. letters are from the same household. The reasons for support are summarised as set out in the table below:

Supporting Comment	Officer Response
<p>Most effective use of the land. Currently vacant and used for fly tipping.</p>	<p>Noted, and discussed at Paragraph 5.1 of this report.</p>
<p>Proposal is of good quality design.</p>	<p>Noted, and discussed at Paragraph 5.3 of this report.</p>

## 9 **PROPOSED CONDITIONS**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.  
**REASON** To comply with Section 91(1) The Town & Country Planning Act 1990 (as amended).
2. The development hereby permitted shall be carried out in accordance with the following approved plans and documents: 1234/01, 1234/02, 1234/03, 1234/04, 1234/05, 1234/06, Preliminary Ecological Appraisal March 2022; Email dated 15<sup>th</sup> March 2023 from Plumb Associates  
**REASON** To ensure that the development is carried out in accordance with the details as approved.

3. Prior to the construction of the dwelling hereby approved, details and samples of the materials to be used in the construction of the dwelling are to be submitted and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

REASON In the interest of the character and appearance of the area in accordance with Policy D1 of the Maldon District Local Development Plan (2017) and guidance contained within the National Planning Policy Framework (2021).

4. Prior to the commencement of the development the applicant shall submit in writing a construction management plan to the local planning authority for approval. Within the construction management plan it must consider the following requirements:

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

- a) no waste materials should be burnt on site, instead being removed by licenced 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 that 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.

REASON In the interest of protecting residential amenity, in accordance with Policies D1, D2 and D5 of the Maldon District Local Development Plan (2017) and guidance contained within the National Planning Policy Framework (2021).

5. No development works above ground level shall occur until details of the surface water drainage scheme to serve the development shall be submitted to and agreed in writing by the local planning authority. The agreed scheme shall be implemented prior to the first occupation of the development. The scheme shall ensure that for a minimum:

- 1) The development should be able to manage water on site for 1 in 100 year events plus 40% climate change allowance.
- 2) Run-off from a greenfield site for all storm events that have a 100% chance of occurring each year (1 in 1 year event) inclusive of climate change should be no higher than 10/l/s and no lower than 1/l/s. The rate should be restricted to the 1 in 1 greenfield rate or equivalent greenfield rates with long term storage (minimum rate 1l/s) or 50% betterment of existing run off rates on brownfield sites (provided this does not result in a runoff rate less than greenfield) or 50% betterment of existing run off rates on brownfield sites (provided this does not result in a runoff rate less than greenfield).

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

Where the local planning authority accepts discharge to an adopted sewer network you will be required to provide written confirmation from the statutory undertaker that the discharge will be accepted.

REASON To ensure adequate provision is made for surface water drainage in accordance with Policies D1 and D5 of the Maldon District Local Development Plan (2017) and guidance contained within the National Planning Policy Framework (2021).

6. No development works above ground level shall occur until details of the foul drainage scheme to serve the development shall be submitted to and agreed in writing by the local planning authority. The agreed scheme shall be implemented prior to the first occupation of the development.

REASON To ensure adequate provision is made for foul water drainage in accordance with Policies D1 and D5 of the Maldon District Local Development Plan (2017) and guidance contained within the National Planning Policy Framework (2021).

7. Areas within the curtilage of the site for the purpose of the reception and storage of building materials shall be identified clear of the highway.

REASON To ensure that appropriate loading / unloading facilities are available to ensure that the highway is not obstructed during the construction period in the interest of highway safety in accordance with Policy T2 of the Maldon District Local Development Plan (2017) and guidance contained within the National Planning Policy Framework (2021).

8. Prior to first occupation of the development, cycle parking shall be provided in accordance with the Maldon District Council Vehicle Parking Standards (2018) and the Maldon District Design Guide (2017). The approved facility shall be secure, convenient, covered and retained at all times.

REASON To ensure appropriate cycle parking is provided in the interest of highway safety and amenity in accordance with Policies T1 and T2 of the Maldon District Local Development Plan (2017) and guidance contained within the National Planning Policy Framework (2021).

9. Prior to first occupation of the development, the Developer shall be responsible for the provision, implementation and distribution of a Residential Travel Information Pack for sustainable transport, approved by Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator. These packs (including tickets) are to be provided by the Developer to the dwelling free of charge.

REASON In the interests of reducing the need to travel by car and promoting sustainable development and transport in accordance with Policies T1 and T2 of

the Maldon District Local Development Plan (2017) and guidance contained within the National Planning Policy Framework (2021).

10. Full details of both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority prior to the occupation of the dwelling hereby approved and these works shall be carried out as approved.

These details shall include, for example:

- i. Proposed finished levels contours;
- ii. Means of enclosure;
- iii. Car parking layouts;
- iv. Other vehicle and pedestrian access and circulation areas;
- v. Hard surfacing materials;
- vi. Minor artefacts and structures (e.g. furniture, refuse or other storage units, signs, lighting);
- vii. Proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc, indicating lines, manholes, supports);

The soft landscape works shall be carried out as approved within the first available planting season (October to March inclusive) following the occupation of the dwelling 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 interest of the character and appearance of the area in accordance with Policy D1 of the Maldon District Local Development Plan (2017) and the policies and guidance contained in the National Planning Policy Framework (2021).

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

REASON In the interest of the character and appearance of the area in accordance with Policy D1 of the Maldon District Local Development Plan (2017) and the policies and guidance contained in the National Planning Policy Framework (2021).

12. Prior to the first occupation of the dwelling hereby permitted, the first floor windows in the northern elevation shall be glazed with opaque glass and a non-openable design with the exception of a top hung fanlight (which shall be at least 1.7m above internal floor level) and shall be retained as such thereafter.

REASON In the interest of protecting residential amenity, in accordance with Policy D1 of the Maldon District Local Development Plan (2017) and the policies and guidance contained in the National Planning Policy Framework (2021).

13. All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal

(Plumb Associates, March 2022) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

This may include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.

REASON To conserve and enhance protected and Priority species 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 and s40 of the NERC Act 2006 (Priority habitats & species) and in accordance with Policy S1 and N2 of the Maldon District Local Development Plan (2017) and the policies and guidance contained in the National Planning Policy Framework (2021).

14. Prior to the commencement of development, a construction environmental management plan (CEMP: Biodiversity) shall be submitted to and approved in writing by the Local Planning Authority.

The CEMP (Biodiversity) shall include the following.

- a) Risk assessment of potentially damaging construction activities.
- b) Identification of “biodiversity protection zones”.
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements) including method statement for Great Crested Newts and Reptiles.
- d) The location and timing of sensitive works to avoid harm to biodiversity features.
- e) The times during construction when specialist ecologists need to be present on site to oversee works.
- f) Responsible persons and lines of communication.
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
- h) Use of protective fences, exclusion barriers and warning signs.
- i) Containment, control and removal of any Invasive non-native species present on site.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the Local Planning Authority”

REASON To conserve protected and Priority species 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) and s40 of the NERC Act 2006 (Priority habitats & species) and in accordance with Policy S1 and N2 of the Maldon District Local Development Plan (2017) and the policies and guidance contained in the National Planning Policy Framework (2021).

15. Prior to any works above slab level, 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 Biodiversity Enhancement Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed enhancement measures;

- b) detailed designs or product descriptions to achieve stated objectives;
- c) locations, orientations, and heights 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 prior to occupation and shall be retained in that manner thereafter.

**REASON** To enhance protected and Priority species & habitats and allow the LPA to discharge its duties under the NPPF 2021 and s40 of the NERC Act 2006 (Priority habitats & species) and in accordance with Policy S1 and N2 of the Maldon District Local Development Plan (2017) and the policies and guidance contained in the National Planning Policy Framework (2021).

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

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

**REASON** To allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species) and in accordance with Policy S1 and N2 of the Maldon District Local Development Plan (2017) and the policies and guidance contained in the National Planning Policy Framework (2021).

### **INFORMATIVES**

1. Should any land or groundwater contamination be found that was not previously identified or not considered in a scheme agreed in writing with the Local Planning Authority, the site or part thereof should be re-assessed by a competent person in accordance with the Essex Contamination Land Consortium's Land Contamination Technical Guidance for Applicants and Developers and UK best-practice guidance.
2. **Waste Management**  
The applicant should consult the Waste and Street Scene Team at Maldon District Council to ensure that adequate and suitable facilities for the storage and collection of domestic waste and recyclables are agreed, and that the site road is constructed to accommodate the size and weight of the Council's collection vehicles.
3. **Highways**  
The requirements above shall be imposed by way of negative planning condition or planning obligation with associated legal framework as appropriate. There shall be no discharge of surface water from the development onto the Highway.

All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works. The applicants should be advised to contact the Development Management Team by email at [development.management@essexhighways.org](mailto:development.management@essexhighways.org)

This page is intentionally left blank



**REPORT of  
DIRECTOR OF SERVICE DELIVERY**

---

**to  
SOUTH EASTERN AREA PLANNING COMMITTEE  
25 MAY 2023**

<b>Application Number</b>	<b>23/00080/FUL</b>
<b>Location</b>	Land between 45 Steeple Road and 1 Mill Road, Mayland
<b>Proposal</b>	Construction of a 1.5 storey chalet style 4-bedroom dwelling, access and landscaping
<b>Applicant</b>	Mr and Mrs Paul Lee
<b>Agent</b>	Mr Antony Cussen
<b>Target Decision Date</b>	2 June 2023 (EOT agreed)
<b>Case Officer</b>	Lisa Greenwood
<b>Parish</b>	<b>MAYLAND</b>
<b>Reason for Referral to the Committee / Council</b>	Member Call In – Councillor M W Helm Policies S1, D1, T2

**1. RECOMMENDATION**

**REFUSE** for the reasons as detailed in Section 9 of this report.

**2. SITE MAP**

Please see below.

**Land between 45 Steeple Road and 1 Mill Road**  
**Mayland**



 <p><b>Copyright</b>          For reference purposes only.          No further copies may be made.          This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office © Crown copyright.          Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings.          Malden District Council 100018588 2014</p> <p><a href="http://www.malden.gov.uk">www.malden.gov.uk</a></p>	Scale:	1:1,250
	Organisation:	Malden District Council
	Department:	Department
	Comments:	Essex
	Date:	17/03/2023
	MSA Number:	100018588

### **3. SUMMARY**

#### **3.1 Site description**

- 3.1.1 The application site is located on the western side of Mill Road, which is accessed off Steeple Road to the south. Mill Road lies east off the main settlement of Mayland, with the application site positioned adjacent to the settlement boundary, which runs along the southern site boundary. The surrounding area is a mix of residential and undeveloped land, with an allocated employment site to the west. Directly south of the site are terraced bungalows, and a pedestrian and vehicle access to the rear of the bungalows extends this boundary, separating the site from the private amenity spaces associated with these dwellings. To the north of the site is a detached dwelling, no.1 Mill Road, 'Fiddlers Rest'. To the east of the site, beyond the highway, and to the south east, beyond the highway, is undeveloped land / open countryside.
- 3.1.2 The site itself measures approximately 0.13 hectares in area and is roughly rectangular in shape. The site comprises of grassland, established trees and vegetation, and has been cleared to some extent in recent months. The site is bound to the north and south by existing close boarded timber panel fencing, and at the frontage by security fencing. Trees are retained at the western boundary and have been felled to some extent at the frontage.

#### **3.2 The Proposal**

- 3.2.1 Planning permission is sought for the erection of a 1.5 storey chalet style 4-bedroom dwelling, with access and landscaping.
- 3.2.2 At ground floor level, the development would provide for a study, WC, hall, store, plant room, utility room, lounge and kitchen / dining room. At first floor level, there would be 4 bedrooms with en-suites, including a dressing room to the master bedroom, plus a linen cupboard and an airing cupboard are also proposed.
- 3.2.3 At ground floor level, the dwelling is proposed to measure between approximately 7.139 and 15.210 metres in depth and approximately 7.082 and 13.458 metres in width. A porch is proposed at the side (south) elevation. The first floor is to be set back from the ground floor rear elevation. The first floor proposes to measure between approximately 6.5 and 13.2 metres in depth and approximately 7 and 13.91 metres in width.
- 3.2.4 The dwelling proposes to provide for an intersecting / overlaid roof of a different design. At the north elevation, a mansard roof with dormer windows proposed and would measure 8.639 metres to the ridge and approximately 6.9 metres to the eaves. Part of a hipped roof is proposed across the ground floor dining room. This would extend part of the ground floor rear elevation and will measure 3.745 metres to the ridge and 2.662 metres to the eaves. An intersecting mansard roof with 1 dormer and roof lights is also proposed on the rear elevation and proposes to measure 7.131 metres to the ridge and approximately 5.5 metres to the eaves. At the southern (side) elevation the larger mansard roof is visible, as is the hipped roof extending the dining room, the dormer window serving the intersecting mansard roof, and the proposed porch. The porch measures approximately 3.3 metres to the ridge and 2.2 metres to the eaves of a hipped roof. At the eastern (front) elevation, 1 dormer and roof lights are proposed to serve the intersecting mansard roof extending the master bedroom. The dormer window proposed at the northern (side) elevation is also visible, as is the eastern (side) elevation of the proposed porch and the front elevation of the larger mansard.

- 3.2.5 The walls are to be constructed with stock facing brickwork cement render, with plain interlocking clay tiles to the roof is to be constructed with plain interlocking clay tiles, and the windows and doors will comprise of UPVC sealed double glazed units. The boundary treatments are proposed to comprise of close boarded and panelled timber fencing, with the existing close boarded and panelled timber fencing retained and augmented where required. The vehicle access and hard standing would be constructed with permeable stone / gravel surfacing.
- 3.2.6 1 double door and 1 window are proposed at the ground floor side (south) elevation, with 1. Velux window at first floor level. 2. quadruple and 1 single window at the front (east) ground floor elevation, with 1. dormer window, roof lights and 2 double windows above. 1 single window and 2 doors are proposed at the ground floor (north) elevation, with 2. small dormer windows above. sets of bi-fold doors and 3. roof lights at the ground floor rear (west) elevation, with 2 double windows, 1 dormer window and roof lights above.
- 3.2.7 The dwelling would be set back from the highway by approximately 20 metres. Parking for 3no. vehicles is indicated at the frontage. An area of private amenity space is proposed to the west of the site, and a wildlife pond is indicated at the rear / western boundary. The dwelling would be separated from the shared boundary to the north by between 2.748 and 3.995 metres, and the boundary to the south by 2.738 metres.
- 3.2.8 This application follows the refusal of planning permission for the erection of a detached dwelling with associated access and landscaping (planning reference 22/00472/FUL), the withdrawal of planning application reference 21/01186/OUT, which was an outline application for the construction of 2no. dwellings at the site, and the refusal of planning application reference 22/00925/FUL, which sought planning permission for the erection of a detached dwelling and associated access and landscaping. Subsequently, the agent has engaged with the Local Planning Authority (LPA) to discuss a way forward and agree a suitable scheme. It should be noted that a second application for the construction of two storey 4-bedroom dwelling, access and landscaping has also been submitted for consideration to the LPA, at this South East Committee (planning application reference 23/00079/FUL).

### **3.3 Conclusion**

- 3.3.1 The revised proposal has not addressed concerns with regard to design. As is set out in detail at Paragraph 5.3 of this report, whilst the current scheme has made attempts to reduce the impact on the neighbours to the south of the site, this has been compromised by the proposed design. In particular, the intersecting mansard roof design is problematic. The tallest roof slope appears as a dominant feature, and the numerous roof forms, dormer windows and roof lights appear as inconsistent. The access to the dwelling is also at the side elevation, which compromises the legibility of the scheme. When viewed at the street scene, the proposal appears as an incongruous form of development that is out of keeping with the built form within the locality. It is therefore recommended that planning permission is refused.

#### **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
- 55-59 Planning conditions and obligations
- 60-80 Delivering a sufficient supply of new homes
- 104-113 Promoting sustainable travel
- 119-125 Making effective use of land
- 126-136 Achieving well designed places
- 152-173 Meeting the challenge of climate change, flooding and coastal change
- 174-183 Conserving and enhancing the natural environment

##### **4.2 Maldon District Local Development Plan (2017)**

- S1 Sustainable Development
- S2 Strategic Growth
- S8 Settlement Boundaries and the Countryside
- D1 Design Quality and Built Environment
- D2 Climate Change and Environmental Impact of New Development
- D5 Flood Risk and Coastal Management
- H2 Housing Mix
- H4 Effective Use of Land
- N1 Green Infrastructure Network
- N2 Natural Environment and Biodiversity
- T1 Sustainable Transport
- T2 Accessibility
- I1 Infrastructure and Services
- I2 Health and Wellbeing

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

- Vehicle Parking Standards (2018)
- National Planning Policy Guidance (NPPG)
- Maldon District Design Guide (MDDG) (2017)
- Local Housing Needs Assessment (2021)

#### **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 National Planning Policy Framework (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 Policy S1 of the LDP states that *“When considering development proposals the Council will take a positive Policy S1 of the LDP states that ‘When considering development proposals the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF’ and apply a number of key principles in policy and decision making set out in the Policy.*
- 5.1.2 Policy S8 of the LDP steers new development towards the existing urban areas. This Policy does allow for development outside the rural areas where the intrinsic character and beauty of the countryside is not adversely impacted upon and provided that it is for specified purposes. These specified purposes do not include new build general residential properties but does allow (m) development which complies with other policies of the LDP. Policy I2 states that suitable types of residential development which cater for the ageing population and support healthy and independent lives will be provided. Policy H3 also supports the provision of housing for ‘specialist’ needs.
- 5.1.3 As per Paragraph 74 of the NPPF, the Council as the LPA for the Maldon District is expected to “identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of 5 years’ worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than 5 years old.” To this end, Maldon District Council (MDC) prepares and publishes a 5 Year Housing Land Availability Report, annually, following the completion of the development monitoring activities associated with the Local Development Plan (LDP) 2014-2029’s plan monitoring period of 1 April to 31 March.
- 5.1.4 Work is being carried out by the Council in reviewing the suitability of the methodology used in calculating its 5 Year Housing Land Supply (5YHLS) through its 5YHLS Working Group established in August 2022. The group has yet to conclude the work and present its recommendations to Council. As such, the methodology used for calculating the housing land supply at this point in time is therefore the same as was used in 2021/2022. The last published position was 3.66 years in April 2022. On 30 March 2023, an Officer statement was delivered to Council advising that the 5YHLS, as of 30 March 2023, calculated using the same methodology as 2021/2022 stood at 5.1 years: an increase of 1.44 years. The statement to Council was caveated that this updated supply was still subject to the required further checks and verification activities associated with the methodology, which could mean it either increases or decreases by the time it is presented to Council for approval, in line with the Council decision taken on the 23 February 2023 that the annual land supply statement must now be reviewed and agreed by Council prior to publication.
- 5.1.5 Where a LPA is unable to demonstrate that it has a 5YHLS, the presumption in favour of sustainable development will apply; this is known as the ‘Tilted Balance’. This position is set out in paragraph 11d, together with its footnotes, of the NPPF which states:

*“For decision making this means:*

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

*“(i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or  
“(ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”*

*‘Footnote 8 - This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74).*

- 5.1.6 At the heart of the NPPF is a presumption in favour of sustainable development (the ‘presumption’) which is central to the policy approach in the Framework, as it sets out the Government’s policy in respect of housing delivery within the planning system and emphasises the need to plan positively for appropriate new development. The NPPF replaces Local Plan policies that do not comply with the requirements of the NPPF in terms of housing delivery. In addition, leading case law assists the LPA in its application of NPPF policies applicable to conditions where the 5YHLS cannot be demonstrated (Suffolk Coastal DC v Hopkins Homes and Richborough Estates v Cheshire East BC [2017] UKSC 37).
- 5.1.7 It is necessary to assess whether the proposed development is ‘sustainable development’ as defined in the NPPF. If the site is considered sustainable then the NPPF’s ‘presumption in favour of sustainable development’ applies. However, where the development plan is ‘absent, silent or relevant policies are out of date’, planning permission should be granted ‘unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or that specific policies in this Framework indicate development should be restricted’.
- 5.1.8 On the basis of the above, the Council’s official 5YHLS figure stands at 3.66 years and therefore, having regard to the annually published figure, the Council cannot currently demonstrate a 5YHLS. However, the information in paragraph 5.1.5 above reflects that the Council has clearly adopted a more proactive approach to housing delivery by approving housing developments outside the settlement boundaries, in addition to both within settlement boundaries and on the Strategic sites where they can be deemed sustainable. The likelihood of the forthcoming published 5YHLS figure negatively deviating significantly from the five-year mark is considered unlikely given that the figures were last calculated one day prior to the end of the monitoring period. Therefore, whilst the titled balance still applies, it is reasonable to determine that the 5YHLS is now more level than it was previously. Therefore, the Council acknowledge the importance of delivering homes given the backdrop of a national shortage of housing, and particularly appropriate homes for the residents of the District through a positive approach to decision making, noting also that the 5YHLS is not a ceiling for approving housing development. However, this increase in supply allows the Council to be less constrained in our consideration of the most sustainable developments and of those that carry the greatest benefits to ensure that developments are sustainable for the District.
- 5.1.9 In judging, therefore, whether a residential scheme should be granted, it is necessary to consider the weight attributed to the planning benefits which the proposal offers in contributing towards and maintaining a healthy and consistent 5YHLS, particularly in light of the currently official shortfall, against the adverse impacts identified (if any) arising from the proposal in relation to the policies contained within the NPPF and relevant policies in the Local Plan.

- 5.1.10 There are three dimensions to sustainable development as defined in the NPPF. These are the economic, social and environmental roles. The LDP through Policy S1 re-iterates the requirements of the NPPF Policy S1 allows for new development within the defined development boundaries. The presumption in favour of sustainable development although triggered by the tilted balance, does not change the statutory status of the development plan as the starting point for decision making. However, given the balanced nature of the five year housing land position at this point in time, together with the published five year housing land figure as being less than five year supply of deliverable housing, sites outside of the defined development boundaries could still be judged to be 'sustainable development' through the three dimension tests of the NPPF'. The LPA is, however obliged to exercise its judgement as to whether to grant planning permission having regard to any other relevant planning policies and merits of the scheme. Paragraph 79 of the NPPF states that:

*"To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby."*

- 5.1.11 The application site is located just outside of the defined settlement boundary of Mayland, an area that is classified as one of the 'larger villages' within the District, as detailed within Policy S8 of the LDP. 'Larger villages' are defined as "settlements with a limited range of services and opportunities for employment, retail and education. They serve a limited local catchment and contain a lower level of access to public transport.'
- 5.1.12 With regard to the service and facilities within Mayland, it is noted that the site is located approximately 2.4km away from Mayland's parade of shops, where there is also a chemist and a doctor's surgery. Closer to the application site, along Steeple Road, there is a petrol station with a convenience store and the Mayland Mill former public house, which now operates as a restaurant. With regard to public transportation, the nearest bus station to the site is sited around 150 metres away. The bus service is limited, albeit this is typical in rural locations. Paragraph 105 of the NPPF (2021) states that *"sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making."*
- 5.1.13 In assessing the accessibility credentials of the site, consideration should be given to applications for residential development at the Whitecap Mushroom Farm (planning reference 16/00224/OUT) and Mayflower Nursery (planning application reference 18/00833/FUL), both of which are in close proximity to the application site (approximately 100m and 200, further north). Although the Whitecap Mushroom Farm application was dismissed at appeal in 2018, the accessibility of the site to public transportation, services and facilities was not a reason for dismissal. Similarly, the application for the erection of residential development at Mayflower Nursery, although also refused, was not considered to be unacceptable with regard to accessibility. The sites were both considered to benefit from some sustainability credentials.
- 5.1.14 On balance, whilst the application site is outside of the settlement boundary for Mayland which is a 'larger village', it is considered that the proposed development is acceptable with regard to accessibility to local amenities and alternative and sustainable modes of transport. Giving appropriate weight to the guidance in the NPPF (2021), the proposal is therefore acceptable in this regard.

5.1.15 The proposal is an infill development to which Policy H4 of the LDP acknowledges that backland and infill development will be considered on a site-by-site basis to take into account local circumstances, context and the overall merit of the proposal. Backland and infill development will be permitted if a closed list of criteria are met, as follows:

- “1) There is a significant under-use of land and development would make more effective use of it;*
- 2) There would be no unacceptable material impact upon the living conditions and amenity of nearby properties;*
- 3) There will be no unacceptable loss of land which is of local social, economic, historic or environmental significance; and*
- 4) The proposal will not involve the loss of any important landscape, heritage features or ecology interests.”*

5.1.16 With respect to criteria 1, the site comprises of grassland, and the Design and Access Statement submitted to support the proposal confirms that the site was previously used as domestic garden land, belonging to no.1 Mill Road. Whilst the proposal would make a more intensive use of the land, the site is not under-used. Neighbour comments have been received with regard to fly tipping at the site, and the site is currently vacant and neglected, and the proposal would make a more effective use of the land. Criteria 2 will be discussed at Section 5.4, and neighbour objections have been taken into account; however, the proposal would not result in a harmful impact on neighbouring sites. In relation to criteria 3 and 4, an objection has been raised with regard to the lack of an arboricultural report and the clearance of the site.

5.1.17 As is set out at Paragraph 5.6 and 5.8 of this report, the proposal has been reviewed by the Council’s Arboricultural Consultant and Ecological Consultant and found to be acceptable. The Consultant has a working knowledge of the site, having commented on the previous applications. Whilst the site has been cleared, the Consultant can only assess the information presented. The proposal would not cause any harm to social, economic, heritage or ecological interests at the site and therefore there would be no conflict with these criteria. For the reasons aforementioned, the principle of development cannot be reasonably objected to, and any neighbour objections with regard to the fact that the proposed development is located outside of the settlement boundary have been overcome, and no objection has been received in this regard from the Parish Council.

## **5.2 Housing Need and Supply**

5.2.1 Recent case law, as noted above and having regard to S38 (6), restates the primacy of the of the statutory development plan as the starting point in the determination of planning applications. However, in respect of the Council’s current land supply position, the NPPF states that Local Authorities should consider applications for new dwellings in the context of the presumption in favour of sustainable development, and the LDP policies in relation to the supply of housing should not be considered to be up to date. As a result, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole, or specific policies in the NPPF indicate that development should be restricted.

- 5.2.2 Whilst the LDP carries limited weight at present due to the lack of a 5YHLS and consequent impact on its housing delivery policies in particular (including those policies which define settlement boundaries), the NPPF is clear that housing should be provided to meet an identified need.
- 5.2.3 The Housing Needs Assessment (HNA) (2021) is an assessment of housing need for Maldon District as a whole, as well as sub-areas across the District which are considered alongside the housing market geography in this report. The HNA is wholly compliant with the latest NPPF (2021) and Planning Practice Guidance and provides the Council with a clear understanding of the local housing need in the District and demographic implications of this, the need for affordable housing, the need for older persons housing, the need for different types, tenures and sizes of housing, the housing need for specific groups and the need to provide housing for specific housing market segments such as self-build housing.
- 5.2.4 The proposal seeks to provide for 1no. 4-bedroom dwelling. The Maldon District Local Housing Needs Assessment (2021) concludes that the District has a need for smaller dwellings, with the biggest requirement for 3no. beds (40-50%), followed by 2no. beds (25-35%). Therefore, as the proposal is for 1no. 4-bedroom dwelling, the development would not contribute to the Council's most required housing need.

### **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. It should be noted that good design is fundamental to high quality new development and its importance is reflected in the NPPF.
- 5.3.2 The basis of Policy D1 of the 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;*
  - b) Height, size, scale, form, massing and proportion;*
  - c) Landscape setting, townscape setting and skylines;*
  - d) Layout, orientation, and density."*
- 5.3.3 Similar support for high quality design and the appropriate layout, scale and detailing of development is found within the MDDG. In addition, Policy H4 requires all development to be design led and to seek to optimise the use of land having regard, among other things, 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 of the surrounding area; is of an appropriate scale and design that makes a positive contribution to the character of the surrounding area and does not involve the loss of any important landscape, heritage features, or ecology interests.
- 5.3.4 The application site fronts onto Mill Road to the east. The dwellings along Mill Road are generally positioned in alignment, however, there is a site to the north which consists of many non-residential outbuildings which extend west past the main building line.

- 5.3.5 As stated, the site has been the subject of a number of planning applications. The most recent application reference 22/00925/FUL was refused for 2no. reasons, the first reason owing to the design, scale, bulk and height of the proposed dwelling, and the fact that the development would result in an incongruous and dominant development which would cause significant and undue harm to the character and appearance of the surrounding area. Since this time, the applicant has engaged with the LPA and received pre-application advice (planning reference 22/03185/PREAPP. A meeting between the Planning Officer and the applicant and agent has taken place, and written advice received.
- 5.3.6 Turning firstly to the siting of the proposed dwelling, this has now been brought forward and is sited more centrally within the plot and is separated from the boundary to the north by between 2.748 and 3.995 metres, and the boundary to the south by 2.738 metres. Whilst the front elevation does not explicitly follow the building line to the north, this is a welcomed response, as the previously refused scheme was set much further back into the site and was separated by just 1 metre from the shared boundary to the south. The site benefits from a generous plot, and the siting of the proposed dwelling no longer renders the site feeling cramped or overdeveloped.
- 5.3.7 During the pre-application process, the applicant was advised that whilst a bungalow would be preferred at the site, it was agreed that a sympathetically designed two storey dwelling could be acceptable, but that the roof forms would need to be consistent, the access should be located at the front elevation, and there should be a clear fenestration hierarchy. The materials should also be of a high quality.
- 5.3.8 Whilst attempts have been made to lessen the impact of the previous flank wall on the neighbouring bungalows, yet still provide the desired living space for future occupants, this has been compromised by the proposed design. The dwelling appears to have been designed for functional reasons, as opposed to taking design cues from neighbouring dwelling.
- 5.3.9 The intersecting mansard roof is expressly problematic. It appears as a dominant feature, particularly when viewed at the front and side (north) elevation from 1 Mill Road. The height of the roof is excessive, and disproportionate to the ground floor, appearing as an upward extension, rather than as part of the host dwelling. Furthermore, the 2 dormer windows at this elevation are disproportionately small.
- 5.3.10 The location of the dormer window proposed to serve the master bedroom also appears as an awkward addition to the intersecting roof slope, when viewed from the side elevation and the bungalows at Steeple Road. The access is also proposed at the side elevation, which compromises the legibility of the scheme. What is presented is an amalgamation of a bungalow / chalet and a two-storey dwelling.
- 5.3.11 The proposed materials used in the construction of the dwelling are typical for a dwelling in this location, and therefore there is no objection raised to the materials proposed. Should planning permission be forthcoming, a suitably worded planning condition would be imposed requiring samples / high quality photographs and full specifications of the materials to be provided to the LPA to ensure that they are of an appropriate quality.
- 5.3.12 Notwithstanding this, for the reasons aforementioned, the proposal is contrary to Policies D1 and H4 of the MDDG (2017) and the policies and guidance contained in the NPPF (2021). In accordance with Paragraph 134 of the NPPF (2021), “development that is not well designed should be refused.”

## **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 closest neighbours to be potentially impacted by the proposal are the neighbours to the north, at no.1 Mill Road, and to the south, at nos. 53-57 Steeple Road.
- 5.4.3 Turning firstly to the neighbour located to the north, in terms of a loss of privacy, 2no. dormer windows are proposed at the first-floor side elevation, and 2no. doors are proposed at the ground floor side elevation fronting the boundary shared with this neighbour. The first-floor windows will serve 2no. en-suite bathrooms, and the doors at ground floor level will serve a utility room and a plant room.
- 5.4.4 An existing close boarded fence (approximately 1.8 metres in height) is to be retained, and this can be secured by the imposition of a condition. By virtue of the height of the fence, and the fact that the doors do not serve habitable rooms, this will provide sufficient screening at ground floor level. The doors will therefore not result in overlooking to a level that is considered harmful. With regard to the dormer windows at the first floor, as stated, they will serve 2no. en-suite bathrooms. In order to ensure that neighbour amenity is protected, a condition shall be imposed to ensure that the glazing is obscured, and that the windows are of a non-openable design with the exception of a top hung fanlight (which shall be at least 1.7m above internal floor level).
- 5.4.5 With regard to any potential loss of privacy to the rear of no.1 Mill Road, the proposed dwelling is orientated to the south west of this neighbour. Views from the rear of this dwelling will not be directly of the neighbouring garden. Furthermore, this arrangement is not dissimilar to the arrangement of no.1 Mill Road and its immediate neighbour to the north and will be no more harmful in terms of overlooking and is acceptable in this regard.
- 5.4.6 With regard to the impact on the neighbours to the south at nos.53-57 Steeple Road, there are no windows proposed at the first-floor side elevation. A rooflight is proposed, however, this is to provide light and will not afford any overlooking. 1no. set of double doors is proposed at the ground floor south elevation however, a close boarded timber panel fence provides screening at this boundary and this is to be retained. The proposed dwelling is also separated from these neighbours to the south by circa. 30 metres. Owing to the orientation of the proposed dwelling, future occupants will also not be afforded direct views of the neighbouring gardens. The proposal is therefore not considered to result in a loss of privacy to these neighbours.
- 5.4.7 Owing to the siting, orientation and separation distances from the proposed dwelling to the neighbouring dwellings to the north (circa 6 metres) and south (circa 30 metres) the proposal will not result in a loss of daylight and sunlight to these neighbours. It is also not considered that the proposal will appear as overbearing.
- 5.4.8 In terms of any potential noise generated by the development, the proposal has been reviewed by the Council's Environmental Health Officer, who raises no objection, but suggests the imposition of a condition with regard to the submission and approval in writing to the LPA of a Construction Management Plan, which will restrict the working hours on site, and the times of deliveries.

- 5.4.9 Whilst the comments received from neighbours have been carefully considered by the LPA, the proposal has not been found to impact neighbour amenity to a level that could be considered harmful, and any material concerns can be addressed by the imposition of planning conditions.

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

- 5.5.1 Policy T2 of the LDP 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 LDP seeks to include safe and secure vehicle and car parking, having regard to the Council's adopted Parking Standards and maximise connectivity within the development and to the surrounding areas.
- 5.5.2 The access will be taken from Mill Road, where the existing site entrance is located and therefore there are no concerns with such arrangements.
- 5.5.3 The Highways Authority raises no objection, subject to the imposition of conditions regarding the reception and storage of building materials to be identified clear of the highway, cycle parking provision and the provision, implementation and distribution of a Residential Travel Information Pack for sustainable transport, which would be included were planning permission to be forthcoming.

## **5.6 Private Amenity Space and Landscaping**

- 5.6.1 Policy D1 of the approved LDP requires all development to provide sufficient and usable private and public amenity spaces, green infrastructure and public open spaces. In addition, the adopted MDDG (2017) advises a suitable garden size for each type of dwellinghouse, namely 100m<sup>2</sup> of private amenity space for dwellings with 3+ bedrooms.
- 5.6.2 The proposal seeks to provide in excess of 100m<sup>2</sup> of private amenity space. Therefore, the proposal is in compliance with Policy D1 of the LDP.
- 5.6.3 With regard to tree impact and landscaping, the proposal has been reviewed by the Council's Arboricultural Consultant who notes that there are no significant trees on site that are likely to be impacted. The site is low in quality scrub that would need to be cleared. In response to a neighbour objection in this regard, this supports the reasoning as to why an arboricultural report has not been requested.
- 5.6.4 Notwithstanding this, if planning permission is to be forthcoming, a condition would be imposed to ensure a robust soft landscaping scheme was provided. This scheme would include tree and shrub species suitable for the site, offering amenity and wildlife benefit, as well as having sufficient space to develop and be retained in perpetuity thereafter. Neighbour comments have been received with regard to the clearance of the site, and such comments are addressed at Paragraph 5.8 of this report.

## **5.7 Flood Risk and Drainage**

- 5.7.1 Policy D5 of the LDP sets out the Council's approach to minimising flood risk. Policy S1 of the same Plan requires that new development is either located away from high-risk flood areas or is safe and flood resilient when it is not possible to avoid such areas. Policy D5 of the LDP also acknowledges that all development must demonstrate how it will maximise opportunities to reduce the causes and impacts of

flooding through appropriate measures such as Sustainable Drainage Systems (SuDS).

5.7.2 The site is entirely within Flood Zone 1 and presents a low probability of flooding.

5.7.3 With regard to drainage, the proposal has been reviewed by the Council's Environmental Health Officer, who notes that should planning permission be forthcoming, conditions are required with regard to surface water drainage and foul drainage for the site.

## **5.8 Ecology and Impact on European Designated Sites**

5.8.1 Paragraph 170 of the NPPF states that '*Planning policies and decisions should contribute to and enhance the natural and local environment by; (amongst other things) minimising impacts on and providing net gains for biodiversity*'.

5.8.2 Strategic LDP 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.

5.8.3 Policy N1 states that open spaces and areas of significant biodiversity or historic interest will be protected. There will be a presumption against any development which may lead to the loss, degradation, fragmentation and/or isolation of existing or proposed green infrastructure. LDP 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.

5.8.4 The application site falls within the 'Zone of Influence' (Zol) for one or more of the European designated sites scoped into the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). This means that residential development could potentially have a significant effect on the sensitive interest features of these coastal European designated sites, through increased recreational pressure etc.

5.8.5 The development of 1 no. dwelling falls below the scale at which bespoke advice is given from Natural England (NE). To accord with NE's requirements and strategy advice, an Essex Coast RAMS Habitat Regulation Assessment (HRA) record has been completed to assess if the development would constitute a 'Likely Significant Effect' (LSE) to a European site in terms of increased recreational disturbance. The findings from HRA Stage 1: Screening Assessment, are listed below:

### **HRA Stage 1: Screening Assessment**

#### **Test 1 – the significance test**

Is the development within the Zol for the Essex Coast RAMS with respect to the below sites? Yes

Does the planning application fall within the following development types? Yes, the development is for 1 no. dwelling, and therefore the net increase of dwellings at the site is 1 no. dwelling.

## Test 2 – The integrity test

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

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

- 5.8.6 As the answer is no, it is advised that, should planning permission be forthcoming, a proportionate financial contribution should be secured in line with the Essex Coast RAMS requirements. Provided this mitigation is secured, it can be concluded that this planning application will not have an adverse effect on the integrity of the named European sites from recreational disturbance, when considered 'in combination' with other development. NE does not need to re-consult on this Appropriate Assessment.
- 5.8.7 The Essex Coastal RAMS has been adopted. This document states that the flat rate for each new dwelling has been calculated at a figure of £156.76 (2022-2023 figure) and thus, the developer contribution should be calculated at this figure.
- 5.8.8 The applicant has submitted a legal agreement and the relevant checking and monitoring fees to mitigate the impact of the development in terms of RAMS. The agreement has been reviewed by the Council's Legal Services Team and has been found to be acceptable. It is considered reasonable that the required mitigation can be provided.
- 5.8.9 The proposal has been reviewed by the Council's Ecological Consultant, who raises no objection, subject to securing a proportionate financial contribution towards the Essex Coast RAMS, and subject to the imposition of biodiversity mitigation and enhancement measures. The Consultant notes that such measures are necessary to conserve and enhance protected and Priority species particularly nesting birds and Badgers. As the site lies within an Amber Risk Zone for Great Crested Newts, and suitable habitats are present close to the site, it is considered that potential impacts upon GCN are managed under a precautionary method statement for the construction stage, including the storage of materials. This statement should be included in a Construction Environmental Management Plan for Biodiversity (CEMP:Biodiversity). The CEMP should also include the proposed reasonable biodiversity enhancements of bird boxes, and the creation of a wildlife pond, which are recommended in the Preliminary Ecological Appraisal (Plumb Associates, March 2022) to secure net gains for biodiversity. Such measures should be outlined within a Biodiversity Enhancement Strategy and should be secured by a condition of any consent.
- 5.8.9 In addition, the Preliminary Ecological Appraisal (PEA) highlights that the habitat onsite provides some foraging / commuting habitat. With this in mind, if there is any external lighting to be proposed, it is advised that a sensitive lighting scheme is developed to minimise any impacts. This can be secured by the imposition of a condition of any consent.
- 5.8.10 In relation to neighbour objections with regard to the submitted Ecology report being insufficient, and the author's qualifications not being provided. Additional information has been received from the applicant, in the form of a letter from Plumb Associates, dated 15 March 2023. The author of the report, Steve Plumb, confirms his qualifications. holding a BSc (Hons) in Environmental Science and an MSc in Landscape Ecology, Design and Maintenance. Mr Plumb also holds the Lantra Professional Tree Inspection certificate and has been a full member of the Chartered Institute of Ecology and Environmental Management (MCIEEM) since 1995 and a Chartered Landscape Architect (CMLI) in the management and science division since

1996. In addition, Mr Plumb has been Chartered Environmentalist since 2007 and is an Associate of the Arboricultural Association and professionally employed in environmental assessment and management since 1986.

- 5.8.11 The letter confirms that the clearance of the site took place in October 2022, prior to the submission of the current applications. The consultant is not aware of mature trees on borders being removed, unless this is in reference to poor quality hedgerow fronting the property. It is confirmed that a few specimens of trees were larger enough to be considered a specimen (75mm) and provides a 2006 Google earth image, which shows that the area was maintained as a lawn containing few trees and shrubs at that time. Any trees in situ in 2022, therefore, could only be small and immature.
- 5.8.12 The Consultant confirms that the vegetation was assessed as part of the original PEA and was considered to be of generally low value. It is confirmed that there were no trees on the site that would have been classed higher than Category C – Low value if applying the BS5837:2012 assessment criteria.
- 5.8.13 The letter from the applicant also confirms that the site was cleared outside of bird nesting season (October). It is accepted that bird nesting season usually runs from April – August. Legal protection offered under the Wildlife and Countryside Act 1981 (as amended) only extends to disturbing birds that are actively nesting. The clearance of the application site, therefore, was undertaken with good practice.
- 5.8.14 The letter confirms that whilst the Mayland Nature Reserve is within 300m of the site as suggested, the site is not a statutory Local Nature Reserve or a Local Wildlife Site. The small scale of the proposal means it would not have any direct adverse effect on the ecological significance of the nature reserve.
- 5.8.15 The Consultant visited the site again on 14 March 2023 and confirmed that the scrub has been removed, but the trees on the rear boundary have been retained. At present, there are no features on site that would support any protected or important species.
- 5.8.16 The LPA is satisfied that the information provided is an accurate assessment of the site and accords with the comments also made by the Tree Consultant, particularly referring back to the first refused scheme at the site (planning reference 22/00472/FUL). At this time, the Consultant first visited the site and confirmed that no significant trees will be impacted by the proposal. A landscaping condition was recommended, as is the case with the application the subject of this report. It is therefore considered that the objections received in this regard have been suitably overcome.

## **6. PLANNING BALANCE AND SUSTAINABILITY**

- 6.1 It is important to recognise the balance between the Local Plan policies relevant to the development under consideration and the position of the NPPF in respect of the LDP policies now considered to be out of date due to the lack of a 5YHLS. The tilted balance is engaged in this case and hence the LPA must give significant weight to the NPPF and its fundamental position of 'sustainable development' which is the defining purpose of the planning system, as a material consideration.
- 6.2 The key priority within the NPPF, stated at paragraphs 7 and 8, is the provision of sustainable development. This requires any development to be considered against the three dimensions within the definition of 'sustainable development' providing for an economic, social and environmental objective as set out in the NPPF.

- 6.3 Notwithstanding the considerations as contained in those paragraphs, it is incumbent on the LPA, where appropriate to consider, as a matter of general planning judgment, the site specific or scheme specific reasons for refusal. However, it does mean that planning applications submitted for land, which is unallocated or located outside defined settlement boundaries, as set out in local plan policies, could no longer be refused on those grounds alone.
- 6.4 In judging whether a residential scheme should be granted, it is necessary to set out the weight attributed to the planning benefits which the proposal offers in making up the current housing land supply shortfall (with reasons), against the harm identified (if any) arising from the proposed development.
- 6.5 With regard to the 3 tests of sustainability, in economic terms, it is reasonable to assume that there may be some support for local trade from the development, and the additional units may support local businesses within the settlement such as shops and services. This would however be limited given the scale of the proposal. Equally, there is no guarantee that the construction would be undertaken by local businesses, with locally sourced materials. Limited details are provided within the application to this effect. Any economic benefits would therefore be considered nominal.
- 6.6 In social terms the proposal would not help to support a strong, vibrant and healthy community, as the proposal is for a 4-bedroom dwelling, which makes a negligible contribution to the housing need.
- 6.7 In environmental terms, the proposal would, for the reasons set out in this report, have a negative impact on the character and appearance of the area and be out of keeping and is not acceptable in this regard. The benefits of the scheme, therefore, do not outweigh the harm caused.

## **7. ANY RELEVANT SITE HISTORY**

- **23/00079/FUL** – Construction of a two storey 4-bedroom dwelling house, access and landscaping, application pending.
- **22/00925/FUL** - Application for erection of detached dwelling with associated access and landscaping, application refused on 7 October 2022.
- **22/00472/FUL** – Application for erection of detached dwelling with associated access and landscaping, application refused on 8 July 2022.
- **21/01186/OUT** – To construct 2 new houses with new road access and associated parking, application withdrawn on 1 December 2021.

## **8. CONSULTATIONS AND REPRESENTATIONS RECEIVED**

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

<b>Name of Parish / Town Council</b>	<b>Comment</b>	<b>Officer Response</b>
Mayland Parish Council	No objection, with regard to Policies D1 and S1.	Noted

## 8.2 Statutory Consultees and Other Organisations

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
Highways Authority	No objection, subject to the imposition of conditions.	Noted, and discussed at Paragraph 5.5 of this report.
Arboricultural Consultant	No objection, subject to the imposition of a condition securing a robust soft landscaping plan.	Noted, and discussed at Paragraphs 5.6 and 5.8 of this report.
Ecological Consultant	No objection, subject to condition.	Noted, and discussed at Paragraph 5.8 of this report.

## 8.3 Internal Consultees

Name of Internal Consultee	Comment	Officer Response
Environmental Health Officer	No objection, subject to the imposition of conditions re surface water drainage, foul drainage, and a construction management plan.	Noted, and discussed at Paragraphs 5.4 and 5.7 of this report.

## 8.4 Representations received from Interested Parties

- 8.4.1 5 letters were received **objecting** to the application and the reasons for objection are summarised as set out in the table below:

Objection Comment	Officer Response
Site is located outside of the settlement boundary.	Noted, and discussed at Paragraph 5.1 of this report.
Design - scale, bulk and height.	Noted, and discussed throughout this report, but most specifically at Paragraph 5.3 of this report.
Ecology concerns. Report is insufficient. Question re the author's qualifications.	Noted, and discussed at Paragraph 5.8 of this report.
Report fails to reflect the clearance of the site or that there are no trees of hedges. Clearance of the site has failed to allow the LPA to accurately assess the environmental impact of the proposed development.	Noted, and discussed at Paragraphs 5.6 and 5.8 of this report.
Lack of an arboricultural report.	Noted, and discussed at Paragraph 5.6 of this report.
Impact on residential amenity. <ul style="list-style-type: none"><li>- Prominent design</li><li>- Overbearing</li><li>- Proximity and scale cannot offer sufficient mitigation as proposed and would detract from a</li></ul>	Noted, and discussed at Paragraph 5.4 of this report.

Objection Comment	Officer Response
<p>reasonable level of residential amenity</p> <ul style="list-style-type: none"> <li>- Proposed new first floor windows on the north elevation will overlook habitable rooms at Fidler's Rest</li> <li>- Fails to meet infill criteria based on unacceptable impact on living conditions and amenity of nearby properties, lack of an arboricultural report, applicant has failed to demonstrate that the clearance of the site has resulted in an unacceptable loss of land, development continues to have an adverse impact on the landscape.</li> <li>- Impact on health and wellbeing.</li> </ul>	
Impact on parking, access and highway safety.	Noted, and discussed at Paragraph 5.5 of this report.

8.4.2 **4** letters were received **in support** of the application and the reasons for support are summarised as set out in the table below:

Supporting Comment	Officer Response
<p>Effective use of land. Design. Addition of a new dwelling.</p>	Noted.

## 9. **REASON FOR REFUSAL**

1. The proposed dwelling, as a result of its design, scale, bulk and height, would result in an incongruous and dominant development which would cause significant and undue harm to the character and appearance of the surrounding area. The proposal is therefore considered to be contrary to Policies S1, S8, D1 and H4 of the Maldon District Local Development Plan (2017), the Maldon District Design Guide (2017) and the policies and guidance in the National Planning Policy Framework (2021).

This page is intentionally left blank



**REPORT of  
DIRECTOR OF SERVICE DELIVERY**

---

to  
**SOUTH EASTERN AREA PLANNING COMMITTEE  
25 MAY 2023**

<b>Application Number</b>	<b>23/00266/VAR</b>
<b>Location</b>	Paton Place, Nipsells Chase, Mayland
<b>Proposal</b>	Variation of condition 2 (plans) and removal of condition 13 (dormer windows) on approved Planning Permission 21/01240/VAR (Variation on condition 2 and removal of condition 8 on approved planning application 21/00628/FUL (Proposed construction of a single storey self build live/work dwelling)).
<b>Applicant</b>	Mr and Mrs Kenny Paton
<b>Agent</b>	None
<b>Target Decision Date</b>	31.05.2023
<b>Case Officer</b>	Devan Hearnah
<b>Parish</b>	<b>MAYLAND</b>
<b>Reason for Referral to the Committee / Council</b>	Councillor / Member of Staff

**1. RECOMMENDATION**

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

**2. SITE MAP**

Please see below.

This map shows a section of St. Germain's in London. Key features include:

- Streets:** St. Germain's Road (Trunk), St. Germain's Road, and other local lanes.
- Buildings:** Various structures are labeled, including 'St. Germain's' church, 'The Rectory', and several residential houses.
- Parks/Green Spaces:** Areas labeled 'Park' and 'Garden' are shown.
- Highlighted Area:** A large rectangular area in the center-right is filled with red diagonal hatching, likely representing a proposed development or a specific land parcel.
- Scale Bar:** Located at the bottom right, it indicates distances in kilometers (0, 0.025, 0.05, 0.1).



For reference purposes only  
No further copies may be made

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

Organisation: Maldon District Council

Comments: Not Set

MSA Number: 100018588

### 3. **SUMMARY**

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

##### Application site

- 3.1.1 The application site is located to the west of Nipsells Chase to the north of the settlement boundary of Mayland and is a designated wildlife site. The site is currently vacant with the exception of an access track along the northern edge of the site. Access is taken from the west of Nipsells Chase, which adjoins the access track and leads to a wider field where planning permission has been granted for a barn, stable and ménage. The barn has been erected to the southeast of the application site. The majority of the wider site is a largely open area of grassed land with a number of young trees. The edges of the site feature denser and more mature trees and hedgerow soft landscaping. To the north of the site is the residential property of Orchard House and to the south is the residential property of Riversleigh.

##### Proposal

- 3.1.2 The application seeks a variation to condition 2 of application 21/01240/VAR and also the removal of condition 13, which was approved by the Council on 08 April 2022 following the resolution to grant planning permission by the South Eastern Area Planning Committee. For completeness the previous Committee report is provided as **APPENDIX 1** to this report. Conditions 2 and 13 state:

##### *'2 CONDITION*

*The development hereby permitted shall be carried out in accordance with the following approved plans and documents: 1056/03 Rev B, 1056/04A, 1056/05, 1056/06A, 1056/07A, Arboricultural Method Statement 27 September 2021.*

##### *REASON*

*To ensure that the development is carried out in accordance with the details as approved.'*

##### *'13 CONDITION*

*Notwithstanding the provisions of Article 3 of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking or re-enacting that Order) no dormer window or other form of addition or opening shall be constructed in the roof of the building hereby permitted without planning permission having been obtained from the local planning authority.*

##### *REASON*

*To protect the character and appearance of the area, in accordance with policies, S8, D1 and H4 of the Maldon District Local Development Plan and the guidance contained within the National Planning Policy Framework.'*

- 3.1.3 Specifically, the proposal seeks to vary the plans listed in condition 2 and remove condition 13 in order to add first floor accommodation to the previously approved dwelling. The main changes would involve the following:
- Alteration to materials to include brickwork to a height of 1m.
  - Addition of two dormer windows on the front roof slope

- Alteration to the style and size of ground floor windows and style of the doors on the front elevation.
- Change to the design of fascias
- Balustrade added to the covered porch area at the front of the dwelling.
- Addition of two dormer windows and two roof lights on the northern elevation as well as alterations to the window style and design.
- Addition of two dormer windows and four rooflights on the southern elevation as well as alterations to the window style and design.
- Removal of chimney on the rear elevation. Alterations to fenestration design and sizes as well as two additional ground floor windows.
- Addition of one dormer window, two roof lights, a balcony and two Juliet balconies to the first floor on the rear elevation.
- Internal alterations would include the addition of a cake studio, pantry and kitchenette at ground floor in place of the master bedroom and bedroom 2.
- The first floor would include four bedrooms, a living space, three en-suites, a kitchen, a laundry/storage room and a balcony. The number of bedrooms would therefore increase from two to four. This is considered in the paragraph below.

3.1.4 The floor plans only show three bedrooms, although one of the double bedrooms has been labelled as 'bedroom 4'. Furthermore, the room labelled as 'Laundry/Storage Room' could easily accommodate a bedroom, with it being just slightly smaller than 'Bedroom 4'. As the 'Laundry/Storage Room' could easily accommodate a bedroom it is reasonable to expect that this room could be used as a bedroom by future occupiers. Therefore, the proposed changes are considered to create a four-bedroom dwelling and it is on this dwelling size that the application should be assessed.

3.1.5 The application which has been applied to be varied was in fact a variation of an original permission (21/00628/FUL). As part of that application, it was deemed that the development was not a live work unit in planning terms because it only contained a study which was not an unusual situation in any residential dwelling. Therefore, the addition of the workspace at ground floor will need to be fully justified in order for the development to be granted. However, firstly it must be considered whether the application falls within the remit of a S73 application which will be assessed below.

3.1.6 It is noted that the proposed Site Plan (1056/07) does not show the siting of the proposed dormer windows and that the location plan 1056/06 shows an additional outbuilding on the western edge of the land within the Applicants' ownership. However, this is not considered to prejudice the application as the dormers are clearly shown on the elevation plans and the other building does not form part of this application.

## 3.2 Conclusion

3.2.1 The amendments to the application would involve the addition of a first floor of accommodation, which would be in direct conflict with the original description of works which set out that the development is to be of single storey. Therefore, the proposal does not relate to the same development. Consequently, and in accordance with *Finney v Welsh Ministers & Ors* (Rev 1) [2019] EWCA Civ 1868 (case law confirming that a Section 73 application cannot be used where the amendment involves a change in the description of the development) the Council cannot legally grant permission under a S73 application. To do so would result in the decision being ultra vires.

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

##### **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
- 55-58 Planning conditions and obligations
- 60-80 Delivering a sufficient supply of homes
- 104-113 Promoting sustainable transport
- 119-123 Making effective use of land
- 126-136 Achieving well-designed places
- 174-188 Conserving and enhancing the natural environment

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

- Policy S1 Sustainable Development
- Policy S8 Settlement Boundaries and the Countryside
- Policy D1 Design Quality and Built Environment
- Policy D2 Climate Change and the Environmental Impact of New Development
- Policy H2 Housing Mix
- Policy H4 Effective Use of Land
- Policy E1 Employment
- Policy S7 Prosperous Rural Communities
- Policy N2 Natural Environment and Biodiversity
- Policy T1 Sustainable Transport
- Policy T2 Accessibility
- Policy I1 Infrastructure and Services

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

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

#### **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 Planning permission for residential development at the site was granted under the terms of application 21/00628/FUL. It would appear that as a result of the amendment to Condition 2 and removal of Condition 13 this proposal seeks to add

an additional floor of accommodation, as well as an employment element to the building and increase the bedroom numbers proposed, as well as the changes to the external appearance set out above. Therefore, the material considerations when determining this application for the variation of Condition 2 and removal of Condition 13 is whether an additional floor can be added, the employment use would be acceptable at the site, the external and internal (bedroom numbers) changes are acceptable and whether the existing conditions are legally sound and if there is any other justification submitted to warrant their removal/variation.

- 5.1.3 Firstly, it must first be determined whether the proposal falls within the parameters of a Section 73 application.

Does the proposal fall within the parameters of a Section 73 application?

- 5.1.4 Lord Justice Lewison in a recent court judgment in the Court of Appeal between John Leslie Finney and Welsh Ministers, Carmarthenshire County Council and 'Section 73 application stated that "On receipt of such an application section 73 (2) says that the planning authority must "consider only the question of conditions". It must not, therefore, consider the description of the development to which the conditions are attached. The natural inference from that imperative is that the planning authority cannot use section 73 to change the description of the development. It is notable, however, that if the planning authority considers that the conditions should not be altered, it may not grant permission with an altered description but subject to the same conditions. On the contrary it is required by section 73 (2) (b) to refuse the application. That requirement emphasises the underlying philosophy of section 73 (2) that it is only the conditions that matter."
- 5.1.5 The above judgement has been further endorsed recently in the case of *Armstrong v Secretary of State for Levelling-Up, Housing and Communities & Anor* [2023] EWHC 142 where the High Court stated that '*section 73 is clearly intended to be a provision which enables a developer to make a section 73 application to remove or vary a condition, provided of course that the application does not conflict with the operative part of the planning permission*'
- 5.1.6 On the basis of the above judgements, it is clear that permission for a Section 73 application shall only be granted for the same development and any variation shall only relate to the conditions imposed to the original permission.
- 5.1.7 The description of development relating to application 21/01240/VAR was as follows:
- 'Variation on condition 2 and removal of condition 8 on approved planning application 21/00628/FUL (Proposed construction of a single storey self build live/work dwelling).'*
- 5.1.8 The description of development above clearly outlines that the development would be of single storey. Therefore, the proposed amendments would be in conflict with this condition by adding an additional storey of accommodation. Consequently, although the variation would only relate to conditions imposed to the original permission, the proposal does not relate to the same development. As such, the Local Planning Authority (LPA) are not in a position to be able to legally grant the proposed changes under a S73 application as they do not have the power to alter the description of a development.
- 5.1.9 Given that the application cannot be granted on the basis of the application that has been submitted, it is not necessary for an additional assessment considering the suitability of the proposed changes to the site to be outlined within this report.

## 6. ANY RELEVANT SITE HISTORY

- **17/00736/FUL** - Proposed construction of a new detached single storey dwelling – Withdrawn
- **17/01043/AGR** - Prior notification for permeable hardstanding, with edging stones. – Refused 12.10.2017
- **17/01060/DD** - T1 - Elm - Fell. T2 - Wild Pear - Fell. T3 - Wild Pear - Fell. Can works proceed under 5-day D&D \*\*5 Day Notice\*\* - Approved 16.10.2017
- **18/00816/HRN** - Hedgerow removal notice for clearance either side of entrance. Area 1 (Southern side) - 2.5m. Area 2 (Northern side) - 3m. – Allow
- **21/00102/FUL** - Construction of a single storey dwelling – withdrawn
- **21/00102/FUL** - Construction of a single storey dwelling. Withdrawn
- **21/00628/FUL** - Proposed construction of a single storey self-build live/work dwelling. Approved 15.10.2021
- **21/01240/VAR** - Variation on condition 2 and removal of condition 8 on approved planning application 21/00628/FUL (Proposed construction of a single storey self build live/work dwelling). Discharged 08.04.2022
- **22/05055/DET** - Compliance with conditions notification 21/01240/VAR (Variation on condition 2 and removal of condition 8 on approved planning application 21/00628/FUL (Proposed construction of a single storey self build live/work dwelling)) Condition 3 - Materials, Condition 4 - Landscaping, Condition 5- Boundary Treatment, Condition 6 - Cycle Parking, Condition 7 - Parking Spaces, Condition 8 - Surface Water Drainage, Condition 9 - Foul Drainage, Condition 15 - Biodiversity Strategy, Condition 16 – Part Discharged/ Part Refused 25.08.2022
- **23/05015/DET** - (Proposed construction of a single storey self build live/work dwelling) Condition 3 - Materials, Condition 4 - Hard and soft Landscaping, Condition 5- Boundary Treatment, Condition 6 -Cycle Parking, Condition 7 - Parking spaces, Condition 9 - Surface water drainage, Condition 15- Biodiversity Enhancement and Mitigation. Condition 16- Biodiversity Enhancement Strategy for Protected and Priority species. Conditions Discharged.

### Applications within the wider site:

- **18/00280/FUL** - Construction of an apple storage barn – Approved 23.05.2018
- **18/00839/FUL** - Change of use of land to equestrian and erection of building to be used for storage of agricultural machinery and stabling of six horses – Approved 20.06.2019
- **20/00345/FUL** - Variation of condition 2 and 8 on approved planning permission 18/00839/FUL (Change of use of land to equestrian and erection of building to be used for storage of agricultural machinery and stabling of six horses) – Approved 10.07.2020
- **20/00733/FUL** - An equestrian arena to ride in the wet winter months. The arena is to be made of an equestrian sand mix. Approved 12.11.2020
- **23/00076/FUL** - Change of use from agricultural building to 2-bedroom bungalow (C3 Use) and alterations to fenestration. Pending Consideration

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

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

<b>Name of Parish / Town Council</b>	<b>Comment</b>	<b>Officer Response</b>
Mayland Parish Council	No response received at the time of writing this report.	Noted

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

<b>Name of Statutory Consultee / Other Organisation</b>	<b>Comment</b>	<b>Officer Response</b>
Local Highways Authority	No response received at the time of writing this report	Noted - given that the access has not changed since the original application and the increase in traffic as a result of the employment element is unlikely to have an impact on the local highway network, no response is considered necessary.

### **7.3 Internal Consultees**

<b>Name of Internal Consultee</b>	<b>Comment</b>	<b>Officer Response</b>
Environmental Health	No objection subject to the inclusion of foul and surface water drainage conditions	Noted if the application were to be approved these conditions would be included and updated where necessary to reflect changes since the previous grant of planning permission on the original application.

### **7.4 Representations received from Interested Parties**

- 7.4.1 **One** letter of representation has been received for this report. The reasons are summarised below:

<b>Objecting Comment</b>	<b>Officer Response</b>
<ul style="list-style-type: none"><li>- A new application is required as the dwelling is no longer single storey.</li><li>- Impacts on the character and appearance of the area.</li></ul>	<ul style="list-style-type: none"><li>- Addressed at section 5.1</li><li>- Noted. However, it is not relevant to address this matter at this stage because Officers view is that the application cannot be</li></ul>

<ul style="list-style-type: none"> <li>- Potential for other rooms in the building to be used as additional bedrooms.</li> <li>- Lack of information in respect of the 'cake studio' which is substantially larger than the previous home office.</li> <li>- If permission is granted a condition should be imposed to prevent any future sub-division of the property.</li> </ul>	<p>determined on the basis it does not fall within S73 of the TCPA.</p> <ul style="list-style-type: none"> <li>- Addressed at section 5.1</li> <li>- Noted. However, it is not relevant to address this matter at this stage because Officers view is that the application cannot be determined on the basis it does not fall within S73 of the TCPA.</li> <li>- Noted. However, it is not relevant to address this matter at this stage because Officers view is that the application cannot be determined on the basis it does not fall within S73 of the TCPA.</li> </ul>
--	--

**8. REASON FOR REFUSAL.**

1. The amendments to the application would involve the addition of an additional floor of accommodation. These changes would not be in accordance with the original description of works and therefore, the proposal does not relate to the same development. Consequently, and in accordance with *Finney v Welsh Ministers & Ors* (Rev 1) [2019] EWCA Civ 1868 the Council cannot legally grant permission under a S73 application.

This page is intentionally left blank



**REPORT of  
DIRECTOR OF SERVICE DELIVERY**

---

to  
**SOUTH EASTERN AREA PLANNING COMMITTEE  
6 APRIL 2022**

<b>Application Number</b>	<b>21/01240/VAR</b>
<b>Location</b>	Paton Place, Nipsells Chase, Mayland, Essex, CM3 6EJ
<b>Proposal</b>	Variation on condition 2 and removal of condition 8 on approved planning application 21/00628/FUL (Proposed construction of a single storey self build live/work dwelling)
<b>Applicant</b>	Mr & Mrs Kenny Paton
<b>Target Decision Date</b>	15/02/2022
<b>Case Officer</b>	Nicola Ward
<b>Parish</b>	<b>MAYLAND</b>
<b>Reason for Referral to the Committee / Council</b>	Councillor / Member of Staff

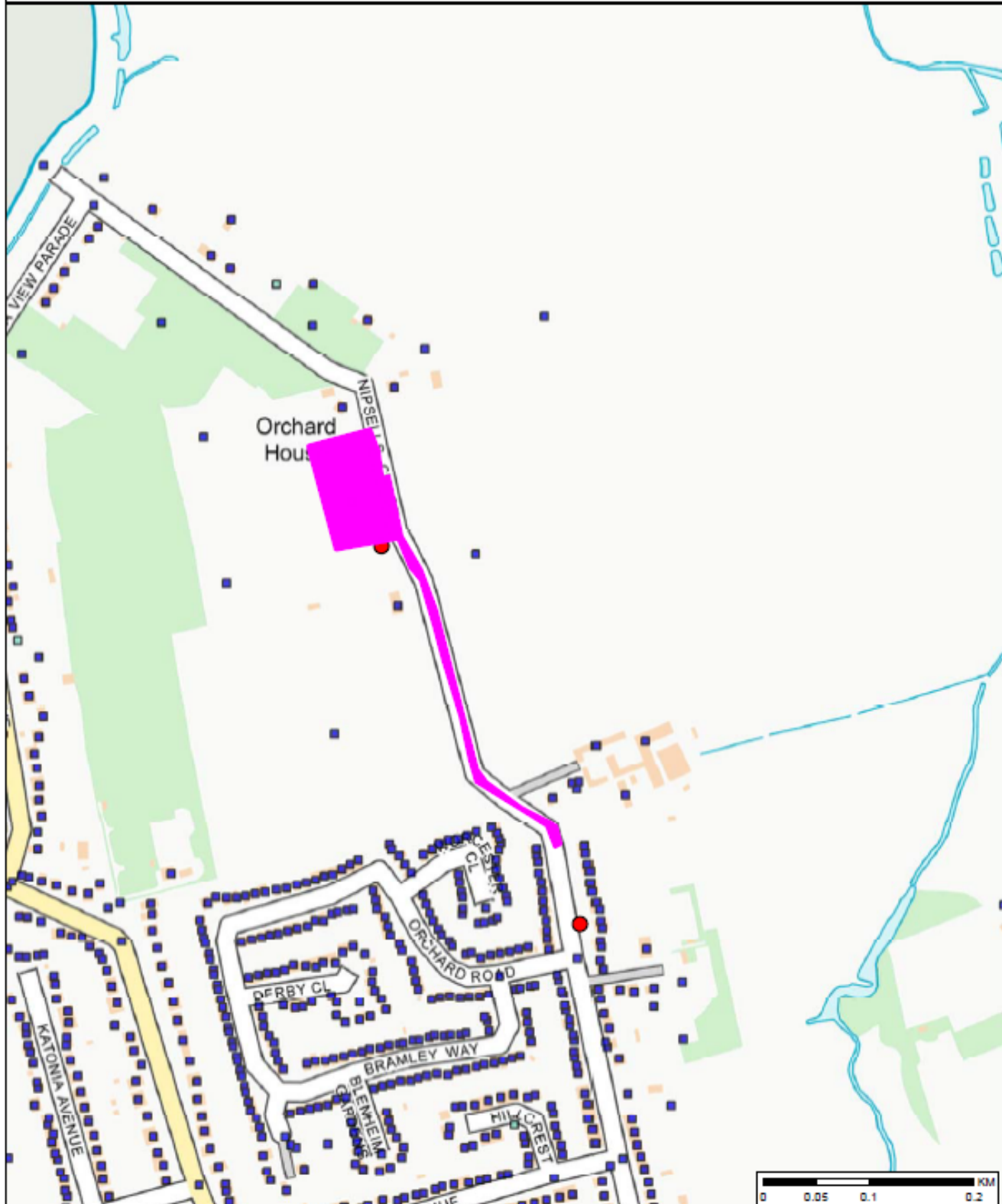
**1. RECOMMENDATION**


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

**2. SITE MAP**

Please see overleaf.

**Paton Place, Nipsells Chase, Mayland**  
21/01240/VAR



 <p><b>Copyright</b></p> <p>For reference purposes only. No further copies may be made. This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Maldon District Council 100018588 2014</p> <p><a href="http://www.maldon.gov.uk">www.maldon.gov.uk</a></p>	Scale:	1:5,000
	Organisation:	Maldon District Council
	Department:	Department
	Comments:	SE Area Planning Committee
	Date:	28/03/2022
	MSA Number:	100018588

### **3. SUMMARY**

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

- 3.1.1 Planning permission is sought for the variation of condition 2 and the removal of condition 8 on approved planning permission 21/00628/FUL which approved the construction of a single storey self build live/work dwelling.

Condition 2 states:

*The development hereby permitted shall be carried out in accordance with the following approved plans and documents: 1056/03 Rev A, 1056/04, 1056/05, 1056/06, 1056/07, Arboricultural Method Statement 27 September 2021.*

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

- 3.1.2 The proposed amendments to the approved scheme are as follows:

- Enlargement of the veranda to the front elevation
- New window opening to serve the office
- New door opening to serve the utility room
- The blocking up of the existing garage door and create a window and door openings to serve the utility room

Condition 8 states:

*The garage hereby permitted shall not be used other than for the accommodation of private motor vehicles or for any other purpose incidental to the enjoyment of the dwellinghouse as such and shall not at any time be converted or used as habitable space/living accommodation.*

*REASON - To ensure suitable parking is provided and in the interests of the amenity of the site, in accordance with policies D1 and T2 of the Maldon District Local Development Plan.*

#### **3.2 Conclusion**

- 3.2.1 Overall, the amendments to the scheme are relatively minor, affecting only the elevations and fenestration, and as such would not detract from the design of the scheme as approved. There is no increase in the size or scale of the building or any part thereof. The removal of condition 8, for use of the purposes proposed, would not impact on the use of the garage for purposes incidental to the dwellinghouse. The proposal is therefore in accordance with policies D1, D3, D5 and H4 of the LDP and the guidance contained within the 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

- 54-58 Planning Conditions and Obligations
- 104-113 Promoting sustainable transport
- 119-123 Making effective use of land
- 126-136 Achieving well-designed places
- 152 – 169 Meeting the challenge of climate change, flooding and coastal change

#### **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
- H1 Affordable Housing
- H4 Effective Use of Land
- N2 Natural Environment and Biodiversity
- I1 Infrastructure and Services
- T1 Sustainable Transport
- T2 Accessibility

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

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

### **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 LDP.
- 5.1.2 Planning permission is sought for the variation of condition 2 and the removal of condition 8 on approved planning permission 21/00628/FUL which granted permission for the construction of a single storey self build live/work dwelling.
- 5.1.3 The principle of a live/work dwelling at the application site was established under the terms of application 21/00628/FUL. The determining factors in the assessment of this application are whether the proposed alterations are acceptable in terms of the visual impact on the character and appearance of the area and site, and any resulting impacts on the neighbouring properties and the provision of car parking.
- 5.1.4 Whilst it is noted that this application is a variation of conditions application and additional accommodation and design features are proposed, it is not considered the proposed amendments result in development deviating from the original description.

- 5.1.5 Given the above assessment it is considered that the variation to the development, previously approved under the terms of 21/00628/FUL, is acceptable in principle subject to the material considerations detailed below.

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

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

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

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

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

- 5.2.3 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.
- 5.2.4 Similar support for high quality design and the appropriate layout, scale and detailing of development is found within the MDDG.
- 5.2.5 In addition, policy H4 requires all development to be design-led and to seek to optimise the use of land having regard, among others, to the location and the setting of the site, and the existing character and density of the surrounding area. The policy also seeks to promote development which maintains, and where possible enhances, the character and sustainability of the original building and the surrounding area; is of an appropriate scale and design that makes a positive contribution to the character of the original building and the surrounding area.
- 5.2.6 The proposed amendments to the scheme include the addition of one window within the north elevation to serve the proposed office, one new door opening within the south elevation to serve the proposed utility room, enlargement of the proposed veranda to the front elevation, blocking up the garage door and inserting one window opening and one door opening within the north elevation.
- 5.2.7 It is considered that the external changes to the garage are minor and the outlook of the proposed window and door openings would match the appearance of the other

window and door opening that have been approved under 21/00628/FUL. Therefore it is considered that the proposed garage amendments will not have an adverse impact of the appearance of the dwellinghouse or the locality.

- 5.2.8 The enlargement of the veranda would result in an additional projection of 1m, taking the depth of the veranda from 4 m to 5 m. The overall outlook of the veranda would not change therefore, it is not considered that the proposed additional projection would result in demonstrable harm to the character and appearance of the dwellinghouse or the locality.
- 5.2.9 Both the insertion of one window within the north elevation to serve the office and one new door opening within the south elevation are minor in detail and would not affect the character and appearance of the dwellinghouse. Therefore, the additional openings are considered to be acceptable. The removal of Condition 8 would not result in the use of that part of the dwelling in a manner that would not be an incidental use, or not inconsistent with the residential use of the dwelling. A utility room is normally part and parcel of dwelling use. Furthermore, parking can be comfortably accommodated within the site and the applicant has indicated that additional exterior parking space in lieu of the garage will be created.
- 5.2.10 Overall, it is considered that the amendments to the previously approved development under the terms of application 21/00628/FUL, by reasons of the scale, design and appearance would not result in a demonstrable harm to the character and appearance of the site or the locality in accordance with policies D1 and H4 of the LDP.

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

- 5.3.1 The basis of policy D1 of the approved LDP seeks to ensure that development will protect the amenity of its surrounding areas taking into account privacy, overlooking, outlook, noise, smell, light, visual impact, pollution, daylight and sunlight. This is supported by section C07 of the MDDG.
- 5.3.2 There were no concerns raised in terms of the impact of the proposal on residential amenity at the time of the previous application.
- 5.3.3 The dwelling known as Riversleigh lies over 40m to the south of the site and the dwelling known as Orchard House lies over 80m to the north of the site. Whilst it is noted that the amendments include provision for additional openings, due to the significant separation distance, it is not considered that the proposed amendments would result in an impact on the residential amenity of neighbouring sites by way of a loss of light or a loss of privacy.

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

- 5.4.1 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.
- 5.4.2 The proposed in parking standards require a single garage to measure 3m wide and 6.7m deep internally. The existing garage which measures 5.9m and 6.7m therefore, it marginally does not meet the standards contained within the Councils parking

standards. However, it is considered that the garage could accommodate a reasonable size car.

- 5.4.3 The proposed dwelling has two bedrooms, and therefore two parking spaces are required. Whilst the proposal includes the loss of a garage there is a parking area to the north which could accommodate at least 2 car parking spaces. In addition, a condition requiring two parking spaces measuring 2.9m wide and 5.5m deep to be provided at the site as well as a suitable 6m turning area. These spaces are required to remain available for the parking of cars in perpetuity.
- 5.4.4 There are no alterations proposed to the approved vehicular access point or track and therefore, no concerns in respect to highway safety are raised. Therefore, the proposed amendments are considered to be acceptable.

## **5.5 Use of Planning Conditions – The Six Tests**

- 5.5.1 The PPG (Use of Planning Conditions) states that conditions can enhance the quality of a development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects. The NPPF and PPG make it clear that planning conditions should satisfy the following six tests; (1) necessary, (2) relevant to planning, (3) relevant to the development, (4) enforceable, (5) precise and (6) reasonable in all other respects.
- 5.5.2 From the justification provided by the applicant, and considering the above tests, it would appear that the argument is whether the condition fails the first test, e.g. whether it is necessary or not. Given the above assessment, it has been demonstrated that condition 8 is not considered necessary for the development to be acceptable and proceed. The condition is relevant to planning and to the development and therefore meets the second and third tests. The condition is enforceable, and therefore meets the fourth test. The condition is precise and, had the condition continued to be considered necessary, it is reasonable in all other respects.
- 5.5.3 Therefore, Condition 8 fails the first test in its current form, and it is considered justified that the condition should be removed on the basis of the reasons set out in 5.2.9 above.

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

- **17/00736/FUL** - Proposed construction of a new detached single storey dwelling – Withdrawn.
- **17/01043/AGR** - Prior notification for permeable hardstanding, with edging stones. – Refused.
- **17/01060/DD** - T1 - Elm - Fell. T2 - Wild Pear - Fell. T3 - Wild Pear - Fell. Can works proceed under 5-day D&D \*\*5 Day Notice\*\* - Approved.
- **18/00816/HRN** - Hedgerow removal notice for clearance either side of entrance. Area 1 (Southern side) - 2.5m. Area 2 (Northern side) - 3m. – Allow.
- **21/00102/FUL** - Construction of a single storey dwelling – withdrawn.

Applications within the wider site:

- **18/00280/FUL** - Construction of an apple storage barn – Approved.
- **18/00839/FUL** - Change of use of land to equestrian and erection of building to be used for storage of agricultural machinery and stabling of six horses – Approved.
- **20/00345/FUL** - Variation of condition 2 and 8 on approved planning permission 18/00839/FUL (Change of use of land to equestrian and erection of building to be used for storage of agricultural machinery and stabling of six horses) – Approved.
- **20/00733/FUL** - An equestrian arena to ride in the wet winter months. The arena is to be made of an equestrian sand mix. – Approved.
- **21/00628/FUL** - Proposed construction of a single storey self build live/work dwelling – Approved.

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

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

<b>Name of Parish / Town Council</b>	<b>Comment</b>	<b>Officer Response</b>
Mayland Parish Council	No response.	N/A

## 8. **PROPOSED CONDITIONS**

- 1 The development hereby permitted shall be begun before three years from the 15 October 2021.  
REASON - To comply with Section 91(1) The Town & Country Planning Act 1990 (as amended).
- 2 The development hereby permitted shall be carried out in accordance with the following approved plans and documents: 1056/03 Rev B, 1056/04A, 1056/05, 1056/06A, 1056/07A, Arboricultural Method Statement 27 September 2021.  
REASON - To ensure that the development is carried out in accordance with the details as approved.
- 3 Prior to their use in the development hereby approved, written details and photographs of the materials to be used shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the details as approved.  
REASON - In the interest of the character and appearance of the area in accordance with policy D1 of the approved Local Development Plan and guidance contained within the National Planning Policy Framework.
- 4 Full details of both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority prior to any works occurring above ground level at the application site. These details shall include, for example:
  - i. Proposes finished levels contours;
  - ii. Means of enclosure;
  - iii. Car parking layouts;

- iv. Other vehicle and pedestrian access and circulation areas;
- v. Hard surfacing materials;
- vi. Minor artefacts and structures (e.g furniture, refuse or other storage units, lighting);
- vii. Proposed and existing functional services above and below ground (e.g drainage power, communications cables, pipelines etc, indicating lines, manholes, supports);
- viii. Soft landscaping - Details of proposed schedules of species of trees and shrubs to be planted and planting layouts.

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 interest of the character and appearance of the area, in accordance with policies S8, D1 and H4 of the approved Maldon District Local Development Plan and the National Planning Policy Framework.

- 5 No works above ground level shall take place until details of the siting, height, design and materials of the treatment of all boundaries including existing hedging, gates, fences, walls, railings and piers have been submitted to and approved in writing by the local planning authority. The screening as approved shall be constructed prior to the first occupation of the development to which it relates and be retained as such thereafter.

REASON - In the interest of local amenity and in accordance with policies, S8, D1 and H4 of the Maldon District Local Development Plan and the National Planning Policy Framework.

- 6 Prior to occupation of the development, details of cycle parking shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the occupation of the development.

REASON - To ensure appropriate facilities are provided at the site to encourage alternative modes of transport, in accordance with policies D1 and T2 of the Maldon District Local Development Plan and the National Planning Policy Framework.

- 7 Prior to the first occupation of the development hereby approved, two parking spaces measuring 2.9m wide and 5.5m deep shall be provided at the site as well as a suitable 6m turning area. Furthermore, a fast-charging point shall be provided adjacent to at least one parking space. These spaces shall remain available for the parking of cars in perpetuity.

REASON - To ensure suitable parking is provided, in the interests of parking and highway safety, in accordance with Policy T2 of the Maldon District Local Development Plan.

- 8 No development works above ground level shall occur until details of the surface water drainage scheme to serve the development shall be submitted to and agreed in writing by the local planning authority. The agreed scheme shall be implemented prior to the first occupation of the development. The scheme shall ensure that for a minimum:
  - i. The development should be able to manage water on site for 1 in 100-year events plus 40% climate change allowance.
  - ii. Run-off from a greenfield site for all storm events that have a 100% chance of occurring each year (1 in 1-year event) inclusive of climate change should be no higher than 10/l/s and no lower than 1/l/s. The rate should be restricted to the 1 in 1 greenfield rate or equivalent greenfield rates with long term storage (minimum rate 1l/s) or 50% betterment of existing run off rates on brownfield sites (provided this does not result in a runoff rate less than greenfield) or 50% betterment of existing run off rates on brownfield sites (provided this does not result in a runoff rate less than greenfield).

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

Where the local planning authority accepts discharge to an adopted sewer network you will be required to provide written confirmation from the statutory undertaker that the discharge will be accepted.

REASON - In the interests of protecting against pollution and contamination and ensuring appropriate drainage, in accordance with policy D2 of the Maldon District Local Development Plan and the guidance contained within the National Planning Policy Framework.

- 9 No development works above ground level shall occur until details of the foul drainage scheme to serve the development shall be submitted to and agreed in writing by the local planning authority. The agreed scheme shall be implemented prior to the first occupation of the development.  
REASON - In the interests of protecting against pollution and contamination and ensuring appropriate drainage, in accordance with policy D2 of the Maldon District Local Development Plan and the guidance contained within the National Planning Policy Framework.
- 10 The public's rights and ease of passage over public footpath No.17 (Mayland) shall be maintained free and unobstructed at all times.  
REASON - In the interests of highway and pedestrian safety, in accordance with policies D1 and T2 of the Maldon District Local Development Plan and the guidance contained within the National Planning Policy Framework.
- 11 All loading/unloading/reception and storage of all building materials and the manoeuvring of all vehicles, including construction traffic shall be undertaken within the application site, clear of the public highway.  
REASON - To ensure appropriate parking is retained at the site in accordance with the Maldon District Vehicle Parking Standards SPD, policies

D1 and T2 of the Maldon District Local Development Plan and the guidance contained within the National Planning Policy Framework.

- 12 Notwithstanding the provisions of Article 3 of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking or re-enacting that Order) no garages, extensions or separate buildings (other than incidental outbuildings not exceeding 10 cubic m in volume) shall be erected within the site without planning permission having been obtained from the local planning authority.  
REASON - To protect the character and appearance of the site and the surrounding area, in accordance with policies S8, D1 and H4 of the approved Maldon District Local Development Plan and the National Planning Policy Framework.
- 13 Notwithstanding the provisions of Article 3 of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking or re-enacting that Order) no dormer window or other form of addition or opening shall be constructed in the roof of the building hereby permitted without planning permission having been obtained from the local planning authority.  
REASON - To protect the character and appearance of the area, in accordance with policies, S8, D1 and H4 of the Maldon District Local Development Plan and the guidance contained within the National Planning Policy Framework.
- 14 All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Extended Phase 1 Ecological Habitat Survey Report (Hone Ecology, July 2021) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.
- This may include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW,) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.  
REASON - In the interests of ecology and preserving protected species, in accordance with policies D1 and N2 of the Maldon District Local Development Plan.
- 15 Prior to works above ground level, 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 Biodiversity Enhancement Strategy shall include the following:
- a) Purpose and conservation objectives for the proposed enhancement measures;
  - b) Detailed designs to achieve stated objectives;
  - c) Locations 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 - In the interests of ecology and preserving protected species, in accordance with policies D1 and N2 of the Maldon District Local Development Plan.

- 16 Prior to the installation of any external lighting, a lighting design scheme for biodiversity shall be submitted to and approved in writing by the local planning authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate lighting contour plans, Isolux drawings and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory.

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

REASON - In the interests of ecology and preserving protected species, in accordance with policies D1 and N2 of the Maldon District Local Development Plan.

- 17 All tree works, including tree protection shall be carried out in accordance with the Arboricultural Method Statement dated 27 September 2021, including the identified schedule of supervision visits to ensure protection measures are in place and are being maintained and adhered to.

REASON - In the interests of the protection of the trees on the site, in accordance with policies D1 and N2 of the Maldon District Local Development Plan.