

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

DIRECTOR OF STRATEGY AND
RESOURCES
Paul Dodson
29 August 2023

Dear Councillor

You are summoned to attend the meeting of the;

DISTRICT PLANNING COMMITTEE on WEDNESDAY 6 SEPTEMBER 2023 at 7.30 pm
in the **Council Chamber, Maldon District Council Offices, Princes Road, Maldon.**

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

To register your request to speak / 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 and Resources

COMMITTEE MEMBERSHIP:

CHAIRPERSON:	Councillor K M H Lagan	
VICE-CHAIRPERSON	Councillor R G Pratt	
COUNCILLORS	M G Bassenger	C P Morley
	V J Bell	M G Neall
	D O Bown	N G F Shaughnessy
	S J Burwood	R H Siddall
	J Driver	U G C Siddall-Norman
	M F L Durham, CC	N D Spenceley
	T Fittock	P L Spenceley
	A S Fluker	W Stamp, CC
	L J Haywood	E L Stephens
	J C Hughes	J C Stilts
	K Jennings	N J Swindle
	A M Lay	M E Thompson
	W J Laybourn	S White
	N R Miller	L L Wiffen
	S J N Morgan	





AGENDA
DISTRICT PLANNING COMMITTEE
WEDNESDAY 6 SEPTEMBER 2023

1. **Chairperson's Notices**

2. **Apologies for Absence**

3. **Minutes of the last meeting** (Pages 7 - 18)

To confirm the Minutes of the meeting of the District Planning Committee held on 11 July 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 19 - 58)

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

6. **Any other items of business that the Chairperson of the Committee decides are urgent**

Note:

1. The Council operates a facility for public participation. This will operate only in relation to the consideration and determination of planning applications under Agenda Item No. 5.
2. The Committee may consider representation from one objector, one supporter, a Parish / Town Council representative, and the applicant / agent. Please note that the opportunity to participate is afforded only to those having previously made written representation.
3. Anyone wishing to participate must register by completing [the online form](#) no later than noon on the working day before the Committee meeting.
4. For further information please see the Council's website – www.maldon.gov.uk/committees

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

NOTICES

Recording of Meeting

Please note that the Council will be recording and publishing on the Council's website any part of this meeting held in open session.

Fire

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

Health and Safety

Please be advised of the different levels of flooring within the Council Chamber.

Closed-Circuit Televisions (CCTV)

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

Lift

Please be aware, there is not currently lift access to the Council Chamber.

BACKGROUND PAPERS

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

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

Development Plans

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

Legislation

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

Supplementary Planning Guidance and Other Advice

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

Supplementary Planning Guidance and Other Advice (continued)

ii) Essex County Council

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

iii) Maldon District Council

- Five Year Housing Land Supply Statement 2017 / 18
- Maldon District Design Guide – 2017
- Maldon and Heybridge Central Area Masterplan - 2017
- Infrastructure Delivery Plan (All versions, including update in Council's Hearing Statement)
- Infrastructure Phasing Plan (January 2015 and January 2017 update for Examination)
- North Heybridge Garden Suburb Strategic Masterplan Framework - 2014
- South Maldon Garden Suburb Strategic Masterplan Framework – 2014 (adapted as Supplementary Planning Document (SPD) 2018)
- Vehicle Parking Standards SPD - 2018
- Renewable and Low Carbon Technologies SPD – 2018
- Maldon District Specialist Housing SPD – 2018
- Affordable Housing and Viability SPD – 2018
- Accessibility to Buildings SPD – December 2006
- Children's Play Spaces SPD – March 2006
- Sadd's Wharf SPD – September 2007
- Heybridge Basin Timber Yard SPD – February 2007
- Developer Contributions Guide SPD - 2010
- Heybridge Basin Village Design Statement – 2007
- Wickham Bishops Village Design Statement – 2011
- Woodham Walter Village Design Statement – 2011
- Althorne Village Design Statement
- Woodham Walter Village Design Statement
- Various Conservation Area Appraisals

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

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**MINUTES of
DISTRICT PLANNING COMMITTEE
11 JULY 2023**

PRESENT

Chairperson Councillor K M H Lagan

Councillors J Driver, M F L Durham, CC, A Fittock, A S Fluker,
J C Hughes, K Jennings, W J Laybourn, N R Miller,
N D Spenceley, P L Spenceley, W Stamp, CC, E L Stephens,
J C Stilts, N J Swindle, M E Thompson, S White and
L L Wiffen

136. CHAIRPERSON'S NOTICES

The Chairperson welcomed everyone to the meeting and went through some general housekeeping arrangements for the meeting.

137. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors M G Bassenger, V J Bell, S J Burwood, L J Haywood, A M Lay, S J N Morgan, C P Morley, M G Neall, R G Pratt, N G F Shaughnessy and R H Siddall.

138. MINUTES OF THE LAST MEETING

RESOLVED that the Minutes of the meeting of the District Planning Committee held on 14 June 2023 be approved and confirmed.

139. DISCLOSURE OF INTEREST

There were none.

**140. 23/00076/FUL - LAND NORTH WEST OF RIVERSLEIGH, NIPSELLS CHASE,
MAYLAND**

The Chairperson made Members aware that this agenda item had been deferred on the advice of the Monitoring Officer and Planning department.

141. 23/00226/RESM - LAND AT BROAD STREET GREEN ROAD AND LANGFORD ROAD AND MAYPOLE ROAD, GREAT TOTHAM, ESSEX

Application Number	23/00226/RESM
Location	Land At Broad Street Green Road, Maypole Road And Langford Road, Great Totham; Essex
Proposal	Reserved matters application for the approval of access, appearance, landscaping, layout and scale for Phase 3 for the construction of 234 residential units of planning permission 15/00419/OUT (Part outline/part detailed (hybrid) application for mixed use development including: (i) Residential development (Use Class C3) for up to 1138 dwellings including 30% as affordable housing (Outline) (ii) Residential Care for up to 120 beds (Use Class C2) (Outline) (iii) "Neighbourhood" uses which may include retail, commercial, and community uses (Use Classes A1 and/or A2 and/or A3 and/or A4 and/or A5 and/or D1a and/or D1b) (Outline) (iv) Primary school and early years childcare facility (Use Class D1c) (Outline) (v) A relief road between Broad Street Green Road and Langford Road (Detailed element) (vi) Formal and informal open space (including any associated sports pavilion/clubhouse) (Use Class D2e) (Outline); (vii) Construction of initial gas and electricity sub-stations (Detailed); and (viii) All associated amenity space, landscaping, parking, servicing, utilities (other than as listed in item (vii) above), footpath and cycle links, on-site drainage, and infrastructure works (Outline).
Applicant	Countryside Partnerships PLC
Agent	Mr Matthew Wood - Phase 2 Planning
Target Decision Date	21.07.2023
Case Officer	David Green
Parish	MALDON WEST
Reason for Referral to the Committee / Council	Strategic site within the strategic submitted Local Development Plan Major Application

The Head of Development Management (HoDM) gave a verbal update advising that a consultation response had been received after the agenda had been published from Place Services Ecology and that should Members be mindful to approve the application some minor amendments to the drawing numbers detailed in the proposed conditions were required. The Officer also referred to consultation responses not received in respect of waste and utility services and how these impacted to the application.

Following the Officers presentation, the Applicant, Mr Glossop, addressed the Committee. The Chairperson moved the recommendation of approval as set out in the report and this was duly seconded.

Members sought clarity around the lack of any visual green spaces included in the presentation slides. The HoDM confirmed that the presentation slides were of the application site which was a parcel of a larger scheme previously approved which included the strategic infrastructure and landscaping that enveloped all of these

parcels. He advised that the design proposed was no different to those previously approved and was therefore for consistency and coherence was acceptable.

Councillor M F L Durham declared an interest in light of the comments made regarding Youth Services as he was the Cabinet Member responsible for Youth Services at Essex County Council.

Councillor W Stamp declared an interest as an Essex County Councillor and requested that the Council ensured the developer along with Essex County Council delivered the school included within the overall scheme.

There being no further discussion the Chairperson put his earlier proposal to the Committee and upon a vote being taken this was duly agreed.

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

- 1 The development hereby permitted shall be begun before the expiration of two years from the date of this permission.
- 2 The development hereby permitted shall be carried out in accordance with the following approved plans and documents:
 - Affordable Housing Layout AHL.01 Rev A
 - Amenities Layout AML.01 Rev A
 - Coloured Site Layout CSL.01 Rev A
 - Street Scene Elevations SS.01 Rev A
 - Street Scene Elevations SS.02 Rev A
 - Location Plan LP.01 Rev A
 - Materials Layout ML.01 Rev A
 - Refuse Strategy Layout RSL.01 Rev A
 - Storey Heights Layout SHL.01 Rev A (amended plans submitted showing 2 storey dwelling on plots 211 and 223 to replace 2.5 storey dwellings)
 - Site Layout SL.01 Rev A
 - Visualisation 1 Vis.01 Rev A
 - Visualisation 2 Vis.02 Rev A
 - HT.1BB - Plans and Elevation HT.1BB.pe Rev A
 - HT.419 - Plans HT.419.p Rev A
 - HT.419 - Elevation HT.419.e Rev A
 - HT.419 - Elevation HT.419.e1 Rev A
 - HT.Blyth - Elevation HT.Blythe.e Rev A
 - HT.Blyth - Plans HT.Blythe.p Rev A
 - HT.Brambling - Plans and Elevation HT.BRA.pe Rev A
 - HT.Brambling - Plans and Elevation HT.BRA.pe1 Rev A
 - HT.Brambling - Plans and Elevation HT.BRA.pe2 Rev A
 - HT.Chaffinch - Plans and Elevation HT.CHA.pe Rev A
 - HT.Darland - Plans and Elevation HT.DAR.pe Rev A
 - HT.Darland - Plans and Elevation HT.DAR.pe1 Rev A
 - HT.Darland - Plans and Elevation HT.DAR.pe2 Rev A
 - HT.Darland - Plans and Elevation HT.DAR.pe3 Rev A
 - HT.Dunnock - Plans and Elevation HT.DUN.pe1 Rev A
 - HT.Dunnock - Plans and Elevation HT.DUN.pe Rev A
 - HT F203-1 Elevations HT.F203-1.e Rev A
 - HT F203-1 Floor Plans HT.F203-1.p Rev A
 - HT F203-2 Elevations HT.F203-2.e Rev A
 - HT F203-2 Floor Plans HT.F203-2.p Rev A
 - HT F203-3 Elevations HT.F203-3.e Rev A
 - HT F203-3 Floor Plans HT.F203-3.p Rev A
 - HT F203-4 Elevations HT.F203-1.e Rev A

- HT F203-4 Floor Plans HT.F203-4.p Rev A
- HT F203-5 Elevations HT.F203-5.e Rev A
- HT F203-5 Floor Plans HT.F203-5.p Rev A
- HT F203-6 Elevations HT.F203-6.e Rev A
- HT F203-6 Floor Plans HT.F203-6.p Rev A
- HT.Goshawk Plans and Elevation HT.GOS.pe Rev A
- HT.Kite - Plans and Elevation HT.KIT.pe Rev A
- HT.Kite - Plans and Elevation HT.KIT.pe1 Rev A
- HT. Kite Plans and Elevations HT.KIT.pe2 Rev A
- HT.Kittiwake - Plans and Elevation HT.KTW.pe Rev A
- HT.Kittiwake - Plans and Elevation HT.KTW.pe1 Rev A
- HT.Kittiwake - Plans and Elevation HT.KTW.pe2 Rev A
- HT.Kittiwake - Plans and Elevation HT.KTW.pe3 Rev A
- HT.Lapwing - Plans and Elevation HT.LAP.pe Rev A
- HT.Pochard - Plans and Elevation HT.POC.pe Rev A
- HT.Robin - Plans HT.ROB.p Rev A
- HT.Robin - Elevations HT.ROB.e Rev A
- HT.Robin - Elevations HT.ROB.e1 Rev A
- HT.Robin - Elevations HT.ROB.e2 Rev A
- HT.Sparrow - Plans and Elevation HT.SPA.pe Rev A
- HT.Sparrow - Plans and Elevation HT.SPA.pe1 Rev A
- HT.Wagtail - Plans and Elevation HT.WAG.pe Rev A
- HT.Yellowhammer - Plans HT.YEL.p Rev A
- HT.Yellowhammer - Elevation HT.YEL.e Rev A
- HT.Yellowhammer - Elevation HT.YEL.e1 Rev A
- Flat block plot 184-192 - Ground Floor Plan PT.184-192.p1 Rev A
- Flat block plot 184-192 - First Floor Plan PT.184-192.p2 Rev A
- Flat block plot 184-192 - Second Floor Plan PT.184-192.p3 Rev A
- Flat block plot 184-192 - North Facing Elevation PT.184-192.e1 Rev A
- Flat block plot 184-192 - East Facing Elevation PT.184-192.e2 Rev A
- Flat block plot 184-192 - South Facing Elevation PT.184-192.e3 Rev A
- Flat block plot 184-192 - West Facing Elevation PT.184-192.e4 Rev A
- Flat block plot 329-337 - Ground Floor Plan PT.329-337.p1 Rev A
- Flat block plot 329-337 - First Floor Plan PT.329-337.p2 Rev A
- Flat block plot 329-337 - Second Floor Plan PT.329-337.p3 Rev A
- Flat block plot 329-337 - North Facing Elevation PT.329-337.e1 Rev A
- Flat block plot 329-337 - East Facing Elevation PT.329-337.e2 Rev A
- Flat block plot 329-337 - South Facing Elevation PT.329-337.e3 Rev A
- Flat block plot 329-337 - West Facing Elevation PT.329-337.e4 Rev A
- Flat block plot 347-352 - Ground and First Floor Plan PT.347-352.p1 Rev A
- Flat block plot 347-352 - Second Floor Plan PT.347-352.p2 Rev A
- Flat block plot 347-352 -South & West Facing Elevation PT.347-352.e1 Rev A
- Flat block plot 347-352 – North & East Facing Elevation PT.347-352.e2 Rev A
- Flat block plot 353-359 - Ground Floor Plan PT. 353-359.p1 Rev A
- Flat block plot 353-359 - First Floor Plan PT. 353-359.p2 Rev A
- Flat block plot 353-359 - Second Floor Plan PT. 353-359.p3 Rev A
- Flat block plot 353-359 - North Facing Elevation PT. 353-359.e1 Rev A
- Flat block plot 353-359 - West Facing Elevation PT. 353-359.e2 Rev A
- Flat block plot 353-359 - South Facing Elevation PT. 353-359.e3 Rev A
- Flat block plot 353-359 - East Facing Elevation PT. 353-359.e4 Rev A
- Single Garages - Plans and Elevations GAR.01 Rev A
- Single Garages - Plans and Elevations GAR.02 Rev A
- Double Garages - Plans and Elevations GAR.03 Rev A
- Double Garages - Plans and Elevations GAR.04 Rev A

- Car Barn - Plans and Elevations CB.01 Rev A
 - Bin Store - Plans and Elevations BC.01 Rev A
 - Bin Store - Plans and Elevations BC.02 Rev A
 - Landscape Strategy Layout E50024_L_XX_PL_001 Rev PL1
 - Landscape Management Responsibilities Plan E50024_L_XX_PL_002 Rev PL1
 - Site Layout Adoption Plan 171613-003
 - Site layout Swept Paths 171613-004
 - Drainage Technical Note, Ref 171613 – 01A, dated March 2023 by Ardent Consultants.
 - Accommodation Schedule – Thrive Architects
 - Landscape Management Plan – Countryside Partnerships
3. The development shall be implemented in accordance with the dwelling mix hereby approved, which is as follows:
- Market housing
- 49% - 1 and 2-bedroom dwellings;
 - 32% - 3-bedroom dwellings; and
 - 19% - 4-bed+ dwellings.
- Affordable housing
- 1 Bed Flats – 14
 - 2 Bed Flats - 22
 - 1 Bed Bungalows – 5
 - 2 Bed Bungalows – 5
 - 2 Bed Houses – 21
 - 3 Bed Houses – 3
4. No development works above ground level shall take place until samples of the facing material to be used, including glazing, have been submitted to and approved in writing by the Local Planning Authority. The works must then be carried out in accordance with the approved details.
5. The boundary treatments for the development hereby permitted shall be carried out in accordance with the details and with materials as shown on the approved plans prior to the occupation of any of the dwellings.
6. Notwithstanding condition 5 regarding the development being carried out in accordance with the submitted boundary treatments, details of the hard and/or soft landscaped boundary treatment within the communal gardens adjacent to the ground floor flats shall be submitted to and approved in writing by Local Planning Authority, prior to the occupation of the development hereby approved. The development shall be implemented in accordance with the approved details and retained as such in perpetuity.
7. Within the first available planting season (October to March inclusive) following the occupation of each deliverable section of the development hereby approved the landscaping works as shown on the approved plans and Landscape Management and Maintenance Plan forming part of this permission shall be fully implemented. 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 replacement for it, is removed, uprooted or destroyed or 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 at the same place, unless the Local Planning Authority gives its written consent to any variation.
8. Prior to the occupation of the development the vehicle parking shall be hard surfaced, sealed and marked out in parking bays and the approved garages shall be erected in accordance with the plans and details hereby approved. The vehicle parking area and associated turning area shall be retained in this form in perpetuity. The vehicle parking and garages shall not be used for any purpose

- other than the parking of vehicles that are related to the use of the development unless otherwise agreed with the Local Planning Authority.
9. Details of individual and communal electric car charging points shall be submitted for approval to the Local Planning Authority the EV car charging points shall be implemented in accordance with the approved details prior to the commencement of the beneficial use of the parking space within which they would be located.
 10. The dwellings not provided with a garage hereby permitted shall not be occupied until secure and weather protected storage for bicycles as shown on the approved plans has been provided for the occupiers of these dwellings. The bicycle storage shall be retained as approved in perpetuity.
 11. The development shall be completed in accordance with the details submitted to discharge condition 13 - Ecological Conservation Management Plan Parcel 3,4,5) of 15/00419/out under application 22/05081/DET. The proposed ecological enhancements shall be retained as approved in perpetuity.
 12. Notwithstanding the provisions of Class A, B, C, D, and E of Part 1 of Schedule 2 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 shall be erected within the site without planning permission having been obtained from the Local Planning Authority.
 13. The first floor windows on the side elevations of those properties that have a flank to back wall relationship with the neighbouring sites shall only be glazed in obscure glass (the glass to be obscure to at least Level 4 on the Pilkington Levels of Privacy, or such equivalent as may be agreed in writing with the Local Planning Authority) and fixed shut, except for any top hung fan light which shall be a minimum of 1.7 metres above internal floor level unless otherwise agreed in writing by the Local Planning Authority. In the case of multiple or double-glazed units at least one layer of glass in the relevant units shall be glazed in obscure glass to at least Level 4.
 14. The trees and hedges identified for retention on the approved landscape Management Plan for Open spaces, Landscape Management responsibility Plan and Landscape Strategy Layout report which is attached to and forms part of this permission shall be protected in accordance with that report during the course of the development. The trees and/or hedges shall be protected by measures which accord with British Standard 5837:2012 (Trees in Relation to Construction). The protective fencing and ground protection shall be erected before the commencement of any clearing, demolition and building operations and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Within the fenced protection zone(s) no materials shall be stored, no rubbish dumped, no fires lit and no buildings erected inside the fence, nor shall any change in ground level be made within the fenced area unless otherwise first agreed in writing by the Local Planning Authority. If within five years from the completion of the development a tree or hedge shown to be retained is removed, destroyed, dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, a replacement shall be planted within the site of such species and size, and shall be planted at such time, as specified in writing by the Local Planning Authority.
 15. The site drainage shall be constructed in accordance with the Drainage Technical Note, Ref 171613 – 01A, dated March 2023 by Ardent Consultants, and shall be retained as such in perpetuity.

142. 23/00408/RESM - LAND AT BROAD STREET GREEN ROAD AND LANGFORD ROAD AND MAYPOLE ROAD, GREAT TOTHAM, ESSEX

Application Number	23/00408/RESM
Location	Land at Broad Street Green Road and Langford Road and Maypole Road, Great Totham, Essex
Proposal	Reserved matters application for the approval of access, appearance, landscaping, layout and scale for the construction of 246 residential units with associated access, parking, servicing and landscaping (Parcels 3, 6 and 7 only) of outline application 15/00419/OUT (Part outline/part detailed (hybrid) application for mixed use development including: (i) Residential development (Use Class C3) for up to 1138 dwellings including 30% as affordable housing (Outline) (ii) Residential Care for up to 120 beds (Use Class C2) (Outline) (iii) "Neighbourhood" uses which may include retail, commercial, and community uses (Use Classes A1 and/or A2 and/or A3 and/or A4 and/or A5 and/or D1a and/or D1b) (Outline) (iv) Primary school and early years childcare facility (Use Class D1c) (Outline) (v) A relief road between Broad Street Green Road and Langford Road (Detailed element) (vi) Formal and informal open space (including any associated sports pavilion/clubhouse) (Use Class D2e) (Outline); (vii) Construction of initial gas and electricity sub-stations (Detailed); and (Viii) All associated amenity space, landscaping, parking, servicing, utilities (other than as listed in item (vii) above), footpath and cycle links, on-site drainage, and infrastructure works (Outline).)
Applicant	Crest Nicholson (Eastern)
Agent	Joseph Daniels - Savills
Target Decision Date	24.07.2023
Case Officer	David Green
Parish	MALDON WEST
Reason for Referral to the Committee / Council	Strategic site within the strategic submitted Local Development Plan Major Application

The Head of Development Management (HoDM) made Members aware that the verbal update given for agenda item 6 23/00226/RESM - Land At Broad Street Green Road and Langford Road And Maypole Road, Great Totham, Essex, also related to this application. In response to a question the Chairperson asked the HoDM to circulate the consultation response to Members outside of the meeting.

Following the Officers presentation, Mr Thomas, the agent, addressed the Committee. The Chairperson moved the recommendation of approval as set out in the report and this was duly seconded.

Following a brief debate, the Chairperson put his proposal to the Committee and upon a vote being taken this was duly agreed.

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

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

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans and documents:
- 22.1715.010C – Schedule of Accommodation
 - 22.1715.020B – Design and Access Statement
 - 22.1715.50A – Location Plan
 - 22.1715.51B – Block Plan
 - 22.1715.100I – Proposed Site Layout
 - 22.1715.120A – Proposed Site Layout (Coloured)
 - 22.1715.201B – Parking Plan
 - 22.1715.202C – Materials Plan
 - 22.1715.203B – Garden Area Plan
 - 22.1715.204B – Refuse Strategy Plan
 - 22.1715.205B – Height Plan
 - 22.1715.206B – House Type Distribution Plan
 - 22.1715.207B – Affordable Plan (await amended plan to show revised AH as per John Sword requirements)
 - 22.1715.208B – Density Plan
 - 22.1715.300 – Street Scenes - AA
 - 22.1715.301 – Street Scenes – BB1
 - 22.1715.302 – Street Scenes – BB2
 - 22.1715.303 – Street Scenes CC1
 - 22.1715.304 – Street Scenes CC2
 - 22.1715.400 – Ashtead V1 – Plans and Elevations
 - 22.1715.401B – Ashtead V2 – Plans and Elevations
 - 22.1715.410 – Bacton V1 – Plans and Elevations
 - 22.1715.411A – Bacton V2 – Plans and Elevations
 - 22.1715.420B – Buckingham V1 – Plans and Elevations
 - 22.1715.421A – Buckingham V2 – Plans and Elevations
 - 22.1715.430A – Chesham M4(2) V1 – Plans and Elevations
 - 22.1715.431B – Chesham M4(2) V2 – Plans and Elevations
 - 22.1715.432B – Chesham M4(2) V3 – Plans and Elevations
 - 22.1715.433B – Chesham M4(2) V4 – Plans and Elevations
 - 22.1715.440B – Cromer M4(2) V1 – Plans and Elevations
 - 22.1715.441A – Cromer M4(2) V2 – Plans and Elevations
 - 22.1715.450 – Dartford V1 – Plans and Elevations
 - 22.1715.451A – Dartford V2 – Plans and Elevations
 - 22.1715.460B – Filey V1 – Plans and Elevations
 - 22.1715.470A – Hatfield V1 – Plans and Elevations
 - 22.1715.471A – Hatfield V2 – Plans and Elevations
 - 22.1715.480 – Lavenham V1 – Plans
 - 22.1715.481A – Lavenham V1 – Elevations
 - 22.1715.482 – Lavenham V2 – Plans
 - 22.1715.483B – Lavenham V2 - Elevations
 - 22.1715.490A – Leigh V1 – Plans and Elevations
 - 22.1715.491A – Leigh V2 – Plans and Elevations
 - 22.1715.500B – Marlborough V1 – Plans and Elevations
 - 22.1715.501B – Marlborough V2 – Plans and Elevations
 - 22.1715.502B – Marlborough V3 – Plans and Elevations
 - 22.1715.510A – Needham V1 – Plans and Elevations
 - 22.1715.511A – Needham V2 – Plans and Elevations
 - 22.1715.520B – Romsey M4(2) V1 – Plans and Elevations
 - 22.1715.530A – Salcombe V1 – Plans
 - 22.1715.531A – Salcombe V1 – Elevations
 - 22.1715.532 – Salcombe V2 – Plans
 - 22.1715.533 – Salcombe V2 – Elevations
 - 22.1715.534B – Salcombe V3 – Plans
 - 22.1715.535B – Salcombe V3 – Elevations

- 22.1715.540A – Seaton V1 – Plans and Elevations
- 22.1715.541A – Seaton V2 – Plans and Elevations
- 22.1715.542A – Seaton V3 – Plans and Elevations
- 22.1715.543A – Seaton V4 – Plans and Elevations
- 22.1715.550A – Walton V1 - Plans
- 22.1715.551 – Walton V1 - Elevations
- 22.1715.552A – Walton V2 – Plans
- 22.1715.553 – Walton V2 – Elevations
- 22.1715.560B – Winkfield M4(2) V1 – Plans and Elevations
- 22.1715.570A – 1BB Bungalow V3 – Plans and Elevations (update plan nos when amended floorplans received showing wet room included instead of bathroom for 1&2 bed affordable bungalows)
- 22.1715.575A – 1BB Bungalow V2 – Plans and Elevations
- 22.1715.580A – 1BB Bungalow V1 – Plans and Elevations
- 22.1715.585A – 2BB Bungalow V1 – Plans and Elevations
- 22.1715.586A – 2BB Bungalow V2 – Plans and Elevations
- 22.1715.587A – 2BB Bungalow V3 – Plans and Elevations
- 22.1715.610 – Flat Blocks A – Plans 1
- 22.1715.611 – Flat Blocks A – Plans 2
- 22.1715.612 – Flat Blocks A - Elevations
- 22.1715.620A – Flat Block B – Plans
- 22.1715.621A – Flat Block B – Elevations
- 22.1715.630A – Flat Blocks C – Plans and Elevations
- 22.1715.640 – Flat Blocks D – Plans 1
- 22.1715.641 – Flat Blocks D – Plans 2
- 22.1715.642 – Flat Blocks D – Elevations
- 22.1715.700 – Maisonette – Plans
- 22.1715.701 – Maisonette – Elevations
- 22.1715.800 – Garages and Cycle Store
- 2210-752-ST020B – Refuse Tracking Parcel 3
- 2210-752-ST021B – Refuse Tracking Parcel 6
- 2210-752-ST022B – Refuse Tracking Parcel 7
- 2210-752-ST023B – Fire Tender Tracking Parcel 3
- 2210-752-ST024B – Fire Tender Tracking Parcel 6
- 2210-752-ST025B – Fire Tender Tracking Parcel 7
- 2210-752-ST033B – Parking Strategy Plan Parcel 3
- 2210-752-ST034B – Parking Strategy Plan Parcel 6
- 2210-752-ST035B – Parking Strategy Plan Parcel 7
- 2210-752-ST036B – Junction Visibility Splays Parcel 3
- 2210-752-ST037B – Junction Visibility Splays Parcel 6
- 2210-752-ST038B – Junction Visibility Splays Parcel 7
- 2210-752-ST001B – Drainage Strategy Parcel 3
- 2210-752-ST002B – Drainage Strategy Parcel 6
- 2210-752-ST003B – Drainage Strategy Parcel 7
- 2210-752-ST004B – Exceedance Flow Parcel 3
- 2210-752-ST005B – Exceedance Flow Parcel 6
- 2210-752-ST006B – Exceedance Flow Parcel 7
- 2210-752-ST007 – SuDS Construction Details
- 2210-752-ST010B – Level Strategy Parcel 3
- 2210-752-ST011B – Level Strategy Parcel 6
- 2210-752-ST012B – Level Strategy Parcel 7
- 2210-752-ST030B – Cut Fill Analysis Sheet 1 of 3
- 2210-752-ST031B – Cut Fill Analysis Sheet 2 of 3
- 2210-752-ST032B – Cut Fill Analysis Sheet 3 of 3
- 2210-752-ST040B – Services 1 of 3
- 2210-752-ST041B – Services 2 of 3
- 2210-752-ST042B – Services 3 of 3

- 3120-5-2-DR0001-S4-P5 – Landscape Proposals
 - 3120-5-2-DR0002-S4-P5 – Hard Surface and Boundaries 1 of 2
 - 3120-5-2-DR0003-S4-P5 – Hard Surface and Boundaries 2 of 2
 - 3120-5-2-DR0004-S4-P4 – Planting Proposals 1 of 7
 - 3120-5-2-DR0005-S4-P4 – Planting Proposals 2 of 7
 - 3120-5-2-DR0006-S4-P4 – Planting Proposals 3 of 7
 - 3120-5-2-DR0007-S4-P4 – Planting Proposals 4 of 7
 - 3120-5-2-DR0008-S4-P4 – Planting Proposals 5 of 7
 - 3120-5-2-DR0009-S4-P4 – Planting Proposals 6 of 7
 - 3120-5-2-DR0010-S4-P4 – Planting Proposals 7 of 7
 - 3120-5-2-DR0011-S4-P1 – Typical Tree Planting Details
 - 3120-5-2-DR0012-S4-P1 – Planting Palette 1 of 3
 - 3120-5-2-DR0013-S4-P1 – Planting Palette 2 of 3
 - 3120-5-2-DR0014-S4-P1 – Planting Palette 3 of 3
 - 31250-5-4-LM-0001-S4-P1 – Landscape Management and Maintenance Plan
 - Drainage Strategy and SuDS design and Maintenance report 2210-752 Westcombe Park Heybridge Maldon Rev A March 2023 prepared by Ingent Consulting Engineers.
 - Arboricultural Impact Assessment and Method Statement 11633_AIA.001 Rev B prepared by Aspect
 - Ecological Conservation Management Plan JBA 22/406 Rev A - Parcels 3, 6 & 7 Westcombe Park, dated March 2023 and prepared by James Blake Associates
 - Westcombe Park, North Heybridge, Parcel 3, 6 & 7 Transport Technical Note 23025 dated March 2023 KMC prepared by Transport Planning
 - Energy and Sustainability Statement Westcombe Park, North Heybridge, Parcel 3, 6 & 7 dated March 2023 and prepared by AES Sustainability Consultants Ltd.
 - Updated Ecological Walkover JBA 22/406 ECO02 BFH, Parcels 3, 6 & 7 Westcombe Park, Heybridge dated 24th March 2023 prepared by James Blake Associates
3. The development shall be implemented in accordance with the dwelling mix hereby approved, which is as follows:

Market housing

- 122no. (49.6%) 1 and two-bedroom units
- 72no. (29.3%) three-bedroom units
- 52no. 4 & 5 bedroom units

Affordable housing

Affordable Rented

- 16no. 1 Bed Flats
- 6no. 1 Bed Bungalows
- 5no. 2 Bed Bungalows
- 22no. 2 Bed Houses
- 3no. 3 Bed Houses

Shared Ownership

- 9no. 1 Bed Flats
- 3no. 2 Bed Flats
- 6no. 2 Bed Houses
- 4no. 3 Bed Houses

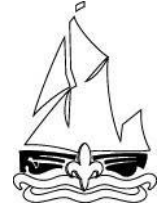
4. No development works above ground level shall take place until samples of the facing material to be used, including glazing, have been submitted to and

- approved in writing by the local planning authority. The works must then be carried out in accordance with the approved details.
5. The boundary treatments for the development hereby permitted shall be carried out in accordance with the details and with materials as shown on the approved plans prior to the occupation of any of the dwellings.
 6. Notwithstanding condition 5 regarding the development being carried out in accordance with the submitted boundary treatments, details of the hard and/or soft landscaped boundary treatment within the communal gardens adjacent to the ground floor flats shall be submitted to and approved in writing by local planning authority, prior to the occupation of the development hereby approved. The development shall be implemented in accordance with the approved details and retained as such in perpetuity.
 7. Within the first available planting season (October to March inclusive) following the occupation of each deliverable section of the development hereby approved the landscaping works as shown on plan no's 3120-5-2-DR0001-S4-P5 – Landscape Proposals, 3120-5-2-DR0002-S4-P5 – Hard Surface and Boundaries 1 of 2, 3120-5-2-DR0003-S4-P5 – Hard Surface and Boundaries 2 of 2, 3120-5-2-DR0004-S4-P4 – Planting Proposals 1 of 7, 3120-5-2-DR0005-S4-P4 – Planting Proposals 2 of 7, 3120-5-2-DR0006-S4-P4 – Planting Proposals 3 of 7, 3120-5-2-DR0007-S4-P4 – Planting Proposals 4 of 7, 3120-5-2-DR0008-S4-P4 – Planting Proposals 5 of 7, 3120-5-2-DR0009-S4-P4 – Planting Proposals 6 of 7, 3120-5-2-DR0010-S4-P4 – Planting Proposals 7 of 7, 3120-5-2-DR0011-S4-P1 – Typical Tree Planting Details, 3120-5-2-DR0012-S4-P1 – Planting Palette 1 of 3, 3120-5-2-DR0013-S4-P1 – Planting Palette 2 of 3, 3120-5-2-DR0014-S4-P1 – Planting Palette 3 of 3, 31250-5-4-LM-0001-S4-P1 – Landscape Management and Maintenance Plan forming part of this permission shall be fully implemented. 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 replacement for it, is removed, uprooted or destroyed or 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 at the same place, unless the local planning authority gives its written consent to any variation.
 8. Prior to the occupation of the development the vehicle parking shall be hard surfaced, sealed and marked out in parking bays and the approved garages shall be erected in accordance with the plans and details hereby approved. The vehicle parking area and associated turning area shall be retained in this form in perpetuity. The vehicle parking and garages shall not be used for any purpose other than the parking of vehicles that are related to the use of the development unless otherwise agreed with the Local Planning Authority.
 9. Details of individual and communal electric car charging points shall be submitted for approval to the Local Planning Authority the EV car charging points shall be implemented in accordance with the approved details prior to the commencement of the beneficial use of the parking space within which they would be located.
 10. The dwellings not provided with a garage hereby permitted shall not be occupied until secure and weather protected storage for bicycles as shown on the approved plans has been provided for the occupiers of these dwellings. The bicycle storage shall be retained as approved in perpetuity.
 11. The development shall be completed in accordance with the details submitted to discharge condition 13 - Ecological Conservation Management Plan Parcel 3,4,5) of 15/00419/out under application 22/05081/DET and the submitted Ecological Conservation Management Plan JBA 22/406 Rev A - Parcels 3, 6 & 7 Westcombe Park, dated March 2023 and prepared by James Blake Associates. The proposed ecological enhancements shall be retained as approved in perpetuity.

12. Notwithstanding the provisions of Class A, B, C, D, and E of Part 1 of Schedule 2 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 shall be erected within the site without planning permission having been obtained from the local planning authority.
13. The first floor windows on the side elevations of those properties that have a flank to back wall relationship with the neighbouring sites shall only be glazed in obscure glass (the glass to be obscure to at least Level 4 on the Pilkington Levels of Privacy, or such equivalent as may be agreed in writing with the local planning authority) and fixed shut, except for any top hung fan light which shall be a minimum of 1.7 metres above internal floor level unless otherwise agreed in writing by the local planning authority. In the case of multiple or double-glazed units at least one layer of glass in the relevant units shall be glazed in obscure glass to at least Level 4.
14. The trees and hedges identified for retention on the approved Arboricultural Impact Assessment and Method Statement 11633 - AIA.001 Rev B report which is attached to and forms part of this permission shall be protected in accordance with that report during the course of the development. The trees and/or hedges shall be protected by measures which accord with British Standard 5837:2012 (Trees in Relation to Construction). The protective fencing and ground protection shall be erected before the commencement of any clearing, demolition and building operations and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Within the fenced protection zone(s) no materials shall be stored, no rubbish dumped, no fires lit and no buildings erected inside the fence, nor shall any change in ground level be made within the fenced area unless otherwise first agreed in writing by the local planning authority. If within five years from the completion of the development a tree or hedge shown to be retained is removed, destroyed, dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, a replacement shall be planted within the site of such species and size, and shall be planted at such time, as specified in writing by the local planning authority.
15. The site drainage shall be constructed in accordance with the Drainage Strategy and SuDS design and Maintenance report 2210-752 Westcombe Park Heybridge Maldon Rev A March 2023 prepared by Ingent Consulting Engineers, and shall be retained as such in perpetuity.
16. Prior to the first occupation of each Parcel a system of traffic calming shall be implemented for that Parcel, in accordance with current national guidance for Traffic Calming, to maintain an overall design speed of 20mph within each Parcel.
17. Prior to the first occupation of Parcels 3 & 7, the vehicular accesses that adjoin a cycleway shall be provided with an appropriate footway/cycleway connection into the site, to facilitate pedestrian and cycle access. All details to be agreed with the Highway Authority.

There being no other items of business the Chairperson closed the meeting at 8.30 pm.

K M H LAGAN
CHAIRPERSON



**REPORT of
DIRECTOR OF SERVICE DELIVERY**

**to
DISTRICT PLANNING COMMITTEE
6 SEPTEMBER 2023**

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

1. RECOMMENDATION

REFUSE subject to the reason set out in section 9 below.

2. BACKGROUND

- 2.1 This planning application was originally presented to the South Eastern Area Planning Committee on 28 June 2023. The application was deferred by the Committee to the District Planning Committee as set out in Part 3 of the Constitution (Responsibility and Functions, Terms of Reference, Area Planning Committees).
- 2.2 The reason for the deferral was as a result of Members considering that they required the Monitoring Officer to be present at the meeting in order to be able to fully consider the points raised by the Applicants' Barrister. Furthermore, it was considered that additional consideration as to the points raised by the Officers and those challenging the Officers' professional opinion was required. Therefore, the application is being brought before the District Planning Committee.
- 2.3 Following the above, the application was then scheduled to be heard by the District Planning Committee on the 11 July 2023. However, following receipt of extensive additional information from the Applicant on 10 July 2023, which included an acknowledgement that a legal representation would be following, advice received from the Monitoring Officer and Head of Development Management was that the application should be deferred in order for Officers to be given sufficient time to address the additional information. The legal view from the Applicants' Barrister has not been received to date. However, an addendum responding to the Applicants' submission is attached at **APPENDIX 1** to this report which is the original report included on the agenda for District Planning Committee on 11 July 2023.

- 2.4 Since the deferral of the application from the District Planning Committee on 11 July 2023, the Council has Declined to Determine four other applications made in respect of the building. The details of which are set out below:

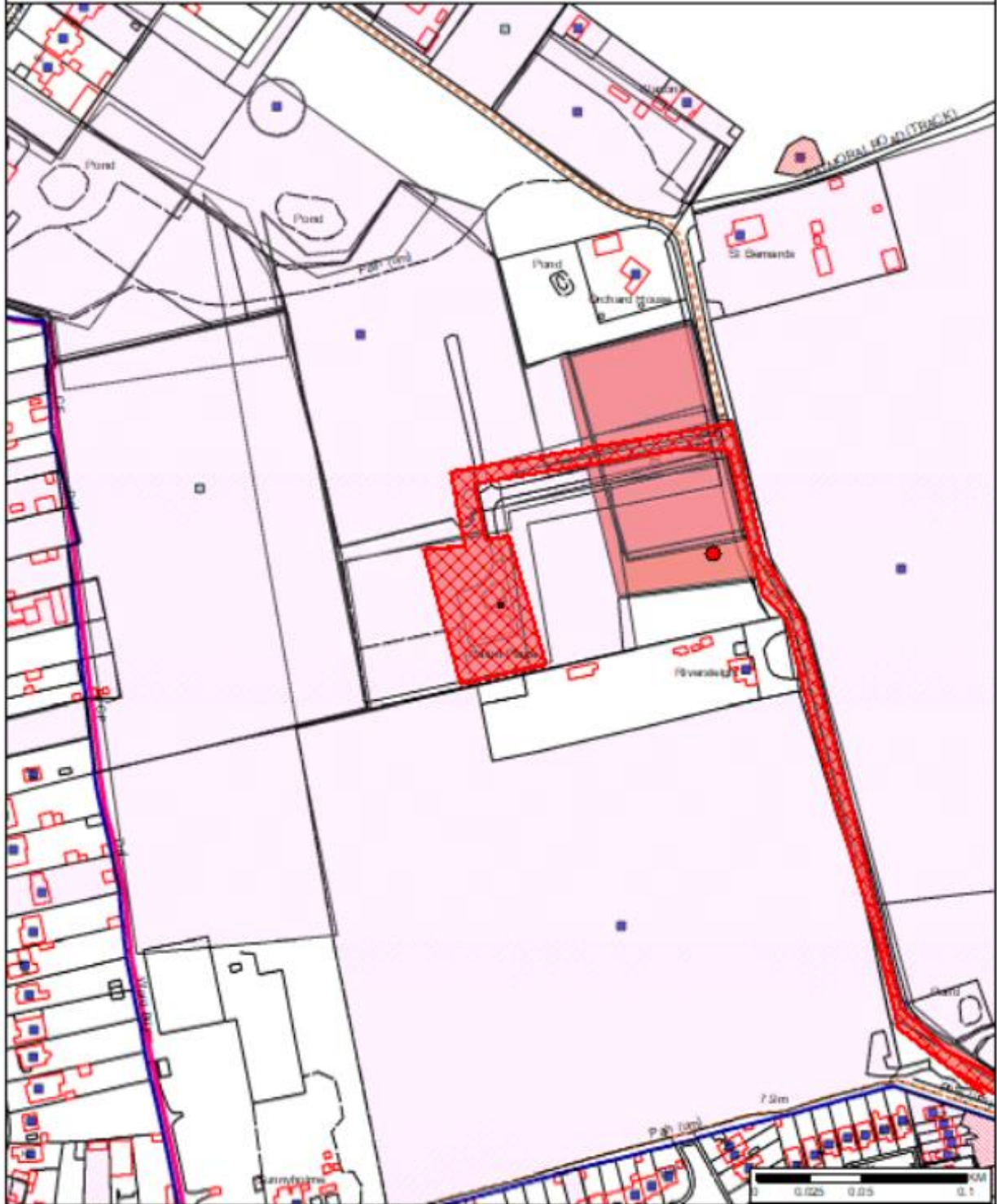
Application Number	Proposal	Decline to Determine decision date
23/00664/FUL	Renewal of existing consent	02 August 2023
23/00782/FUL	Renewal of existing consent.	18 August 2023
23/00796/FUL	Retain structure for mixed use. Agricultural storage, office, reception/rec area, cake and jam making studio.	23 August 2023
23/00798/FUL	Retention of the agricultural building known as The Apple Store to C3 residential, to form a 2 bed bungalow. No external alterations apart from 2 additional windows.	23 August 2023


- 2.5 The reasoning for Declining to Determine these applications was due to the fact that it is not possible to extend the time period given in order to implement a permission in respect of the 'renewal of existing consent' applications and because the Council has determined, in serving an Enforcement Notice, that the building is a dwelling and that there is no extant permission. Therefore, Section 70C of the Town and Country Planning Act (1990) gives Local Planning Authorities (LPAs) the power to Decline to Determine applications where there is an active Enforcement Notice.

3. SITE MAP

Please see below.

23/00076/FUL
SEAC



 <p>Copyright For reference purposes only. No further copies may be made. This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office © Crown copyright. Unauthorized reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Maldon District Council 100018588 2013</p>	Scale:	1:2,500
	Organisation:	Maldon District Council
	Department:	Department
	Comments:	Not Set
	Date:	25/04/2023
	MSA Number:	100018588

www.maldon.gov.uk

4. SUMMARY

4.1 Proposal / brief overview, including any relevant background information

Application site

- 4.1.1 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.
- 4.1.2 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

- 4.1.3 Planning permission has been sought for a change of use from an agricultural building to a two-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.
- 4.1.4 Based on an Enforcement site visit undertaken, the internal works have already taken place.

4.2 Conclusion

- 4.2.1 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. 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.

5. MAIN RELEVANT POLICIES

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

5.1 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

5.2 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

5.3 Relevant Planning Guidance / Documents:

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

6. MAIN CONSIDERATIONS

6.1 Principle of Development

Does the development fall within a change of use?

- 6.1.1 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. There are now also 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 its current form. In considering this, regard should be had to the design, appearance, layout, character and purpose of the building. If the Council concludes that a dwellinghouse has in fact been constructed (this relates to the construction in its entirety and is irrespective of whether elements are compliant with the approved plans) then it cannot be concluded that the previous permission for an 'apple storage barn' is extant.
- 6.1.2 The Council has sought independent legal advice on the above matter, which has been factored into the assessment below.
- 6.1.3 There are two 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.
- 6.1.4 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'*.
- 6.1.5 In conclusion it was found that given the layout and appearance the building was not agricultural and was not designed as such.
- 6.1.6 This is relevant to this application because the building has a clearly residential appearance and has been constructed in its entirety to a standard that would provide comfortable (human) living accommodation rather than reflecting what would be considered as an agricultural (commercial) 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 constructed to a high quality residential standard and has a residential appearance, fixtures and fittings. 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.

- 6.1.7 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 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.
- 6.1.8 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, residential light fittings 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 containing labels such as 'boys toys', 'Lego' 'Make-up' and 'cricket'.
- 6.1.9 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, without doubt in Officers' view, a dwellinghouse.
- 6.1.10 The above is further supported by Building Control records which show photographs demonstrating that the internal walls 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 (walls, roof and openings) and therefore, there is no extant permission at the site.

- 6.1.11 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) of the Town and Country Planning Act 1990, 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.
- 6.1.12 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.
- 6.1.13 At the South Eastern Area Planning Committee discussion was had in relation to whether the barn had or had not been used for agricultural purposes. Following the meeting, Officers have sought further legal advice from both the Monitoring Officer and the Barrister that provided the legal advice to the Council, and conclude that the matter of use is no longer an issue in the consideration of the application. Notwithstanding this, even if the point of use were to be relevant, any agricultural use that has occurred inside the building from both an Officer and legal view is found to be de minimis in any event.

6.2 Conclusion

- 6.2.1 The above assessment against the relevant Case Law concludes that 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 'change of use' of a building where the construction of the building itself is unauthorised. To do so would run contrary to leading case law and consequently set an undesirable precedent for how the Council considers applications raising similar issues in terms of specifically 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 cited case law as 'material considerations'; the legal rule of consistency in planning (administrative) decision making.
- 6.2.2 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.

7. 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.
- **23/00664/FUL** - Renewal of existing consent. Declined to Determine 02.08.2023.
- **23/00782/FUL** - Renewal of existing consent. Declined to Determine 18.08.2023.
- **23/00796/FUL** - Retain structure for mixed use. Agricultural storage, office, reception/rec area, cake and jam making studio. Declined to Determine 23.08.2023.
- **23/00798/FUL** - Retention of the agricultural building known as The Apple Store to C3 residential, to form a 2 bed bungalow. No external alterations apart from 2 additional windows. Declined to Determine 23.08.2023.

8. **CONSULTATIONS AND REPRESENTATIONS RECEIVED**

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

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

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

8.2 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 Recreation disturbance Avoidance Strategy (RAMS)	If the application were to be approved a S106 agreement securing the contribution would be required.
Essex Wildlife Trust (EWT)	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.

8.3 Internal Consultees

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

8.4 Representations received from Interested Parties

8.4.1 **Three** letters of objection have been received. The reasons are summarised in the table below:

Objecting Comment	Officer Response
<ul style="list-style-type: none">• Contrary to Policy E4.• The site is not suitable for further residential accommodation contrary to Policies H7 and S8.• Introduction of residential paraphernalia would be inappropriate at this site.• Unsuitable access including for pedestrians.• This is not an infill site contrary to Policy H4.• The building could be repurposed for other uses such as the stablebeing which has not yet been built on the site.• There are no special circumstances to approve the application.• There is no need for additional housing in this location.• Detrimental impacts on local walks.• Flood Risk.• Highway implications due to the condition of the access track.	<p>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.</p>

9. 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. 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.

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ADDENDUM to the Officer's Report
23/0076/FUL Land North West of Riversleigh, Nipsells Chase, Mayland

1. BACKGROUND

- 1.1 During the afternoon of 10 July 2023, Officers received an extensive document from the Applicants in relation to this Application. The email also included a notification that a legal report would be provided to Officers either on 10 or 11 July 2023. This has not yet been received to date (14 August 2023).
- 1.2 The purpose of this addendum is to set out the Officer's consideration and response to the document submitted by the Applicants. The below will therefore provide comment on the information where necessary. The comments are made in the order of points set out in the Applicants' Statement so that the response is clear and straightforward to follow, and direct comparison can be made by Members during the Committee meeting. It is not the intention of this report to respond to any points within the statement that are not relevant to planning. However, where points unrelated to planning have been made in order to justify the development in planning terms, these have been addressed below.

2. RESPONSE FOLLOWING THE SOUTH EASTERN AREA PLANNING COMMITTEE

- 2.1 Firstly, the Applicants claim that Officers are now in agreement that the use of the building is lawful. This is not correct. Whilst not stated by the Applicants, it is likely, in Officers' view, that they have taken this view on the basis that Officers are no longer relying on the 'Kwik-Save' case law, which was set out in the report to the South Eastern Area Planning Committee on 28 June 2023. The Kwik Save Case Law in essence related to the 'use' of the building and whether the building had been used for, in this case, agriculture; whether the use was minimal and if found to be the case, should it be disregarded. However, following further advice taken from the Lead Specialist: Legal (the Monitoring Officer) and Counsel, Officers are now of the view that the matter of 'use' is no longer relevant. This position is now taken as the facts of the case as presented in the Officer's report is that the building was constructed as a dwelling and therefore, any alleged agricultural use is irrelevant. In any event, even if this was a pertinent matter, the legal view is that any alleged use of agricultural is de minimis (in that any alleged use is so insignificant that its existence, if it existed, would not represent a material intervention in the history of the development to be classified as a use which existed for planning determination purposes).
- 2.2 At 1.2 of the Applicants' Statement it is stated that the Council's Principal Planning Enforcement Officer was 'happy with the agricultural use'. Whilst the Enforcement issues are not fully relevant to the planning application, it is clear that this point is being used as justification of the existing use. An inspection of the unauthorised development was carried out by Enforcement on 14 February 2023. During that inspection the Officer has advised that it was noted that there was an agricultural orchard adjacent to the development and that the owners claimed to have used the structure for agricultural apple storage / processing for a period of three months in a year. However, Officers have not verbally or in writing stated that the structure itself was in agricultural use as from their observations, there was no agricultural building in existence.
- 2.3 Officers have raised that part of the reasoning that they believe the building to be a dwelling is due to some of the internal fixtures. The Applicants claim the reasoning

for the downlighters, as well as the sofa and coffee table is to serve the office use. They allege that Officers have failed to show in photographs two computer desks, office chairs, computer and filing cabinets, which are common features of an office. They note that there would be similar areas in the Maldon District Council offices.

- 2.4 The photos included in the presentation given to the South Eastern Area Planning Committee, which will also be included in the presentation to the District Planning Committee, does show the computer desks and chairs. The presentation (**APPENDIX A**) has been appended to this report for Members' information. Before the remedial works took place, the office furniture was stored in the north-west corner of the building, in the 'apple store' section of the unit. This was clearly shown in the slide photographs. Following the remedial works, these items were moved to what should be the office area, and again this was clearly presented to Members. Therefore, the allegation that Officers have failed, or misrepresented the internal configuration and furniture within the building is unfounded. The presentation clearly provides the context of the building.
- 2.5 Whilst downlighters may not be unusual in all office spaces, it was clear from the initial Enforcement site visit that this area was not being used as office space. Furthermore, it is not the downlighters alone that signal a residential use but the cumulative impact of all the residential fixtures and fittings that are found within the building. Whilst large office spaces, such as the Council Offices, that serve a number of employees do have equipped kitchens and staff 'break out areas' this is proportionate to the number of employees the application building serves. Further, the welfare facilities provided in an authorised office building are not comparable to an agricultural building where any office and welfare facilities should be ancillary to the wider agricultural use. In respect of the application building, it is unlikely to be proportionate or financially viable to dedicate approximately 35% of the overall floorspace to staff welfare and office facilities, particularly when the Applicants' submission notes that the building *'is not fit for the purpose we need it for and all of which will be accommodated in the much larger and higher mixed use agricultural/stable building'*. It is also noted that the majority of this space was intended for apple preparation and a smaller room had been subdivided to the rear of this part of the building to form a utility room type area. Therefore, there is little evidence of this room being able to function for apple preparation.
- 2.6 It is put forward that the insulation in the office is required due to health concerns of the Applicants. Previously, it was stated that the levels of insulation were required due to the need to store the fruit at the correct temperature. Officers have presented evidence as to why this is not necessary and in response are now being presented with a new reason as to why the insulation is needed. Regardless, of this point, the level of insulation applies to the building in its entirety, not just the welfare and office facilities, and is over and above what would be required for an agricultural building.
- 2.7 The interior walls are stated by the Applicants to be non-material and that the reasons for the addition of the walls were based on Parish Council comments. This contradicts previous submissions by the Applicants which state that the walls were constructed as a result of a fruit fly issue experienced in 2021. Officers also have photographic evidence that the building was constructed with the walls in situ from the offset. The Applicants are unclear and ambiguous in their evidence.
- 2.8 Although internal works would not normally fall within development defined within Section 55 of the Town and Country Planning Act, in this case the works are dependent on whether an agricultural use can or cannot take place. The subdivision of the building internally from the outset was not agricultural in nature and did not provide a layout which would allow for day-to-day agricultural functions to occur. The

Applicants state in their own submission that the floor height is unsuitable for a fork-lift. Therefore, there is clearly a level of machinery required in the building which cannot occur in the layout as constructed.

3. KISMET KEBABS LTD

- 3.1 The Applicants have referenced a retrospective planning permission (21/01177/FUL) granted by the North Western Area Planning Committee on 7 July 2022 which was for:

‘ancillary storage (building A), gym/workshop for the site owners (building B), detached factory building (building C), building for demonstrations (building D), single storey front and rear extensions to factory (building E), maintenance and storage building (building E2), covered storage area (building F), sales and staff office, containers for product storage, cladding to existing buildings, entrance gates and fencing, hardstanding for parking and turning, and associated plant and landscaping.’

- 3.2 As can be seen from the description of works, the permission granted bares no relation to this planning application which is for a change of use of an agricultural building to a two-bedroom bungalow (C3 use) and alterations to fenestration. The breaches sought to be remedied as part of that (Kismet) application did not relate to the use of an agricultural building as residential. The two applications are not comparable, and each application must be assessed on its own merits.
- 3.3 The Applicants have set out six questions within their statement, which are largely irrelevant to this case. Officers have presented within the published Committee reports as well as this report, that the breach goes beyond ‘*a couple of internal walls*’ and that evidence suggests that the building was erected as a residential building. The development has no lawful planning consent in any form, either as an agricultural store or a dwellinghouse. As such, the only way to resolve the breach of planning control is for the development to be removed in its entirety. This is addressed further below.
- 3.4 The recommendation set out by Officers in respect of this application is based on sound legal advice and Case Law and is not subject to subjectivity. The Applicants continuously state that the Case Law is irrelevant but has produced no evidence or commentary as to why this is believed. It is also factually incorrect to suggest that the recommendation is based on the harm to the character and appearance of the area. The consideration of this application at this stage is whether or not the application can be considered as a change of use, which the Case Law unambiguously shows that this application cannot.

4. DESIGN

- 4.1 In relation to the design of the building, some Members raised at the South Eastern Area Planning Committee that the building did not appear as an apple store. The Applicants suggest there are two similar examples, albeit at vineyards, in the District. The two examples are Clayhill Vineyard and Crouch Ridge Vineyard. Whilst Officers have not raised concerns over the exterior of the building, it is relevant to address these points given that they have been raised by some Members and the Applicants and relate to material planning considerations.
- 4.2 In respect of the Clayhill Vineyard, the Applicants note that it is a much larger building and features plastered walls at lower level. This building was granted under

the terms of application 15/00157/FUL as a mixed-use development for tea rooms, wine tasting, wine shop and agricultural storage. Therefore, it is not solely an agricultural building and is not directly comparable to this development for an 'apple store'. It is therefore, expected that this building is fitted out differently to a building that is of agricultural use only. Furthermore, the scale of the Clayhill Vineyard building is more resonant of its use than the application building. Also, Special Landscape Areas are no longer designations within the Maldon District. Nevertheless, the exterior design of the building is not for consideration as part of this application.

- 4.3 The points set out above also relate to the Crouch Ridge Vineyard building. The authorised development under application 19/01004/FUL related to a change of use of an agricultural barn to a visitors' centre with storage and hardstanding/access. The fact that the building includes a visitors' centre means that the interior will have a different appearance to a building used as an apple store. The Applicants discuss the current use of this building. However, the authorised use is as set out above, therefore, any other use is not relevant to this application.
- 4.4 It is clear from the above that the examples given are not comparable to the application site and each application must be assessed on its own merits.

5. CHANGES TO THE ORIGINAL PERMISSION

- 5.1 Section 3 of the Applicants' Statement seeks to set out justification to the internal arrangements of the building. The information submitted does not alter Officers' previous stance. The information in relation to the subdivision of the rooms has been contradictory throughout the lifetime of the application, with it first being suggested this was due to fruit fly issues and now being suggested it was carried out on the basis of the Parish Councils comments. As previously stated, photographic evidence also shows that the internal walls were constructed from the outset of the construction phase. It has also not been addressed as to why the other rooms within the building have been subdivided and why a 'hallway' would be necessary in an agricultural storage building. The layout does not lend to a convenient and usable agricultural storage facility. The residential nature of the building goes far beyond the fact of whether or not there are two separate washrooms, it can clearly be seen that the building has been divided into a large quantity of rooms that would go over and above what would be required or that would allow the necessary functions of a store building to occur.
- 5.2 The Applicants have suggested there is a need to expand due to the building being too small and this has triggered the change of use application. However, there has been no application to extend the existing building. There is also no evidence that the stable and store building (18/00839/FUL) would be capable of accommodating the agricultural need, particularly as the agricultural / store element of the stable building is of a smaller footprint than the application building (12sqm smaller minus the office and welfare areas) and is also to be used as a hay, straw and tractor store. There would also be no provision within this building for the extensive washroom facilities the Applicants are now claiming they require. Further, the stable/store building is unlikely to feature the level of insulation that the application building does. Therefore, this contradicts the Applicants' claim that the insulation was required to ensure that the apples were kept at the correct temperature.

6. PHOTOGRAPHIC AND VIDEO EVIDENCE

- 6.1 At section 4 of the Applicants' Statement photographs and a screenshot of agricultural equipment being used outside the building and stored within has been provided. The Applicants suggest that Officers have not presented photographs showing this equipment which is factually incorrect as some of the same equipment can be seen in the photos presented to the Committee (**Appendix A** to this Addendum). However, the use outside the building does not provide any evidence of use of the building itself. Furthermore, as stated in the main report, the equipment is being stored in ways that would not be expected in an agricultural building, such as on boxes to protect the wooden flooring. This is not convenient for long term agricultural use and does not evidence that the building was built as agricultural.
- 6.2 Whilst Officers no longer consider that the use of the building is a relevant argument, it is also relevant to note that Officers have never been presented with any evidence of sales of cider, jam or other produce. Likewise, there has been no evidence provided of any marketing. Therefore, this does not provide any evidence that the building was substantially completed as an agricultural building.

7. REMEDIAL WORKS AND THE ISSUING OF AN ENFORCEMENT NOTICE

- 7.1 Paragraphs 4.14 – 4.21 of the Applicants' Statement addresses remedial works that have been undertaken within the building in order to bring the building in line with the original permission. However, as set out in the Members' Update which accompanied the Committee Report heard at 28 June 2023 South Eastern Area Planning Committee, as well as the Committee report itself, the building constructed was not an 'apple storage barn'. Therefore, even if the building were now to appear to be of an agricultural appearance, which Officers do not believe it is, there is no extant permission that permits the erection of the building at the site. Consequently, the building, as constructed, represents unauthorised development and the alterations to the building do not have a material impact on the previous assessment of the application. Subsequently, the Officers' recommendation for refusal for the reason set out in the main Committee report stand.
- 7.2 Whilst the Enforcement matters are not material to the determination of this application, it is noted that Members raised questions at the South Eastern Area Planning Committee on 28 June as to why an Enforcement Notice was served. Furthermore, the Applicants have raised matters in relation to this within their statement. Therefore, the below information is given to advise Members of the Enforcement action taken to date and the reasoning behind this.
- 7.3 The Applicants were advised in emails dated 11 May and 16 May 2023 that the development would need to be regularised through a retrospective application and Officers would discuss what works would need to occur to satisfy this application. A subsequent alternative proposal was presented by the Applicants on 9 June 2023, the proposal sought remedial works to the structure to remove internal features and avoid the need for a further planning application to be submitted. This solution as presented by the Applicants was unacceptable and this point had already been advised to the Applicants by Officers. This was due to the fact it did not resolve the issues that the development was not built in accordance with the approved planning consent which is not extant and therefore the structure (amended or not), does not have planning permission. The advice relating to a retrospective planning application was not followed up by the Applicants. The Applicants did not meet the deadline for the compliance requirements detailed by the Local Planning Authority (LPA). Therefore, the issue of an Enforcement Notice to resolve the matter took place, as

previously stated it would be in the email on 11 May 2023 and despite the Applicants being given several extensions of time to comply.

- 7.4 As stated above, the requirement of the Enforcement Notice to demolish the structure is based on the fact that an Enforcement Notice cannot legally require the carrying out of works that are beyond reasonable to cease the identified breach of planning control. The development has no lawful planning consent in any form, either as an agricultural store or a dwellinghouse. As such, the only way to resolve the breach of planning control is for the development to be removed in its entirety. The previous correspondence with the Applicants sought to prevent this issue by requesting they submit a retrospective planning application, which they elected not to do.
- 7.5 The Applicants' claim to have conveyed their intent to comply on 9 June 2023 is immaterial as their proposed steps for compliance were not agreed or acceptable to the LPA and only remedial steps that are agreed by the LPA would be considered appropriate criteria to stop the issue of a formal Enforcement Notice to ensure compliance with planning legislation and policy. To reiterate a previous point the Council's Principal Planning Enforcement Officer has confirmed, that at no point have Officers stated that *'everything was perfect'*. The purpose of the site inspection on the 14 February 2023, was to gather initial details of the development. As such, Officers have advised that they clearly and deliberately avoided giving any opinion or summary assessment of the lawfulness of the development, as such an assessment would require further background analysis and detailed inspection of the planning history. The Applicants were advised that the development was subject to an enforcement investigation for an "alleged material change of use to a dwellinghouse". The conveying of the planning status of the development to the Applicants, as part of the Planning Enforcement investigation, was initially done by email on 11 May 2023. At which time it was clearly detailed that the development was an "identified breach of planning control".
- 7.6 On 14 June 2023 Planning Enforcement Officers attended the site, not to inspect remedial works as proposed by the Applicants; as this was not an agreed solution to the breach of planning control, but rather to confirm the condition of the site prior to the issue of a formal Enforcement Notice (the confirmation of a development's current condition prior to formal action being issued is standard practice). As changes had occurred, appropriate amendments were made to the drafted Notice before it was served on the property. The service of the Notice, being appropriate on the basis that; as the development remained an unauthorised dwellinghouse, albeit a dwellinghouse that had undergone remedial internal changes, but still had no lawful planning consent, due to the 2018 application no longer being extant.

8. EVIDENCE

- 8.1 The Applicants' Statement goes on to provide images of a 'Pruning Fruit Trees' certificate obtained by Mr Paton in January 2018, A 'Level 2 Food Hygiene and Safety for Catering' certificate for Mrs Paton issued in April 2020 and invoices for apple equipment dated February and March 2017. However, whilst Officers are not stating that the Applicant has not undertaken course in food hygiene or fruit pruning, this does not evidence that any activity in line with these qualifications has been undertaken on the site, particularly as the 'Pruning Fruit Trees' certificate was provided as evidence with the original application before the building was constructed and therefore does not show any use. Furthermore, the invoices show that the equipment was purchased over a year before planning permission was granted and the same invoices were produced as part of the original planning permission.

Therefore, this raises questions as to where the equipment was being stored prior to the erection of the building and where were the activities being undertaken.

- 8.2 Notwithstanding the above, the building appears to have been erected as a dwelling, not in accordance with the approved plans, and therefore this point is considered to be moot.
- 8.3 Images have also been provided of silicone moulds which are said to be used for making organic sweets which Officers acknowledge. However, this does not detract from the other matters such as the residential treatment to the interior of the building. Furthermore, there is no evidence of when these moulds were provided to the Applicant or of any sales of sweets. It is also alleged that Officers have missed off the 'giant mixer' used in jam production. However, a mixer is included in the photographic evidence obtained by Officers, but it does not appear to be anything above a householder mixer.



9. LOCATION OF THE SITE

- 9.1 The information provided in respect of the location of the site is not relevant to the consideration of this application. Given that and as previously stated, it would not be necessary for an additional assessment to consider the suitability of a change of use of the site to be outlined on the premise that the application cannot be granted on the basis of the application that has been submitted.

10. CASE LAW

- 10.1 It is suggested by the Applicants that the *'case law is totally irrelevant and [their] Barrister will give an update during the meeting'*. Officers have since had written confirmation via email from the Applicants that a legal opinion from their Barrister was forthcoming and would be with Officers by 11 June 2023. However, disappointingly, this has still not been received by Officers to date (August 2023). It should be noted that anything said in the verbal representation at the Planning Committee which has not been given appropriate time for consideration by Officers should be given very limited weight. The original Committee report has been in the public domain and available to the Applicant since the 18 May 2023. The Applicants originally asked the South Eastern Area Planning Committee to defer the application on 25 May 2023 in order to give them time to consider their options. It has now been a considerable number of weeks since the publication of the report, which included the relevant case law. Therefore, the Applicants have been provided with ample time to provide any further evidence they wish to the LPA. Should the Applicants wish to submit any further information / evidence this would need to be made so as to allow Officers sufficient time to digest and comment as appropriate.

11. OTHER MATTERS

- 11.1 Since the submission of the Applicants additional Statement, which has been addressed above, the Council has also been in receipt of four other planning applications relating to the building which the Council has declined to determine. The details of which are set out in paragraphs 2.4 and 2.5 of the main report. Application 23/00798/FUL sought to retain 'of the agricultural building known as The Apple Store to C3 residential, to form a 2 bed bungalow. No external alterations apart from 2 additional windows'. The application, therefore, is not seeking operational development other than the addition of two windows but appears to be seeking a permission relating to 'use'. The Application Form supporting that application asks 'has the work or change of use already started' to which the Applicant has answered yes and that it started on 03 January 2019. It then asks has the work or change of use been completed, to which the Applicant has responded yes, the development was completed on 06 March 2021. The following section states that the existing use is Agricultural. However, there is clearly conflicting information within the Planning Application Form, which appears to state that the Change of Use has been completed in one section but that the use is Agricultural in another. As the proposal relates to use only, it does not appear that the reference is to the operational works.
- 11.2 To add further ambiguity to the above the Application Form for the 'renewal of existing consent' proposals (23/00664/FUL and 23/00782/FUL) and 23/00796/FUL (Retain structure for mixed use. Agricultural storage, office, reception/rec area, cake and jam making studio) sets the commencement date as 01 March 2020 and the completion date as 02 June 2021. The Application Form supporting the proposal subject of this report states that the work or change of use hasn't already started.
- 11.3 It is unclear why three applications have different commencement dates to the application that seeks permission for the building to be a dwellinghouse and why this application states that the works or change of use have not commenced when the other submissions clearly stated that it has been completed prior to the submission of this application. This not only could be interpreted as an admission to the use of the building as a dwelling and having been completed as so, but also adds to the lack of clarity in the Applicants' submission that has changed stance throughout the lifetime of the application in relation to matters such as the need for the levels of insulation contained within the building and the erection of the additional internal walls. The lack

of clear and precise information further supports the case that the building is not agricultural but residential.

12. CONCLUSION

- 12.1 Officers have considered the information set out in the Supporting Statement submitted by the Applicants on 10 July 2023. However, the information does not have a material impact on the assessment set out within the Officer's report and the recommendation for refusal is maintained. This is on the basis that the assessment against the relevant Case Law concludes that the building, as constructed, was not an 'apple storage barn'. Consequently, 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.
- 12.2 The Council has served an Enforcement Notice setting out that the Council has already determined that the building is a dwelling and to determine this application differently would be going against the Council's current position.
- 12.3 If the Applicant wishes to evidence that the building was constructed as an agricultural use, then this would need to be carried out as part of a Lawful Development Certificate application. A full application for a change of use is not the appropriate mechanism to try and achieve this.

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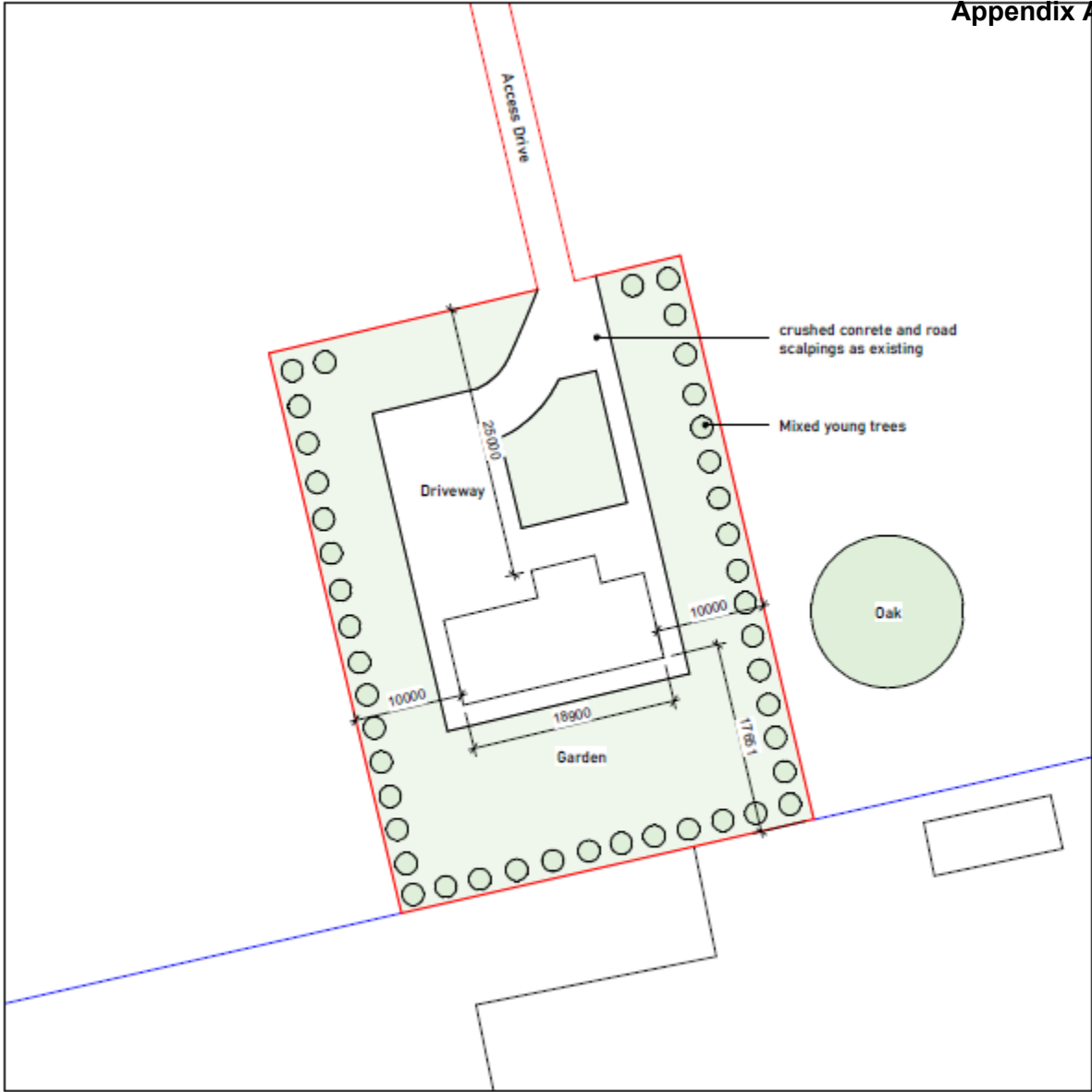
28th June 2023



**South-Eastern Area
Planning Committee**



- **Agenda Item No. 6**
- Application ref:
23/00076/FUL
- Proposal: Change of use from agricultural building to 2 bedroom bungalow (C3 Use) and alterations to fenestration.



Block Plan
1 : 500

Proposed Elevations



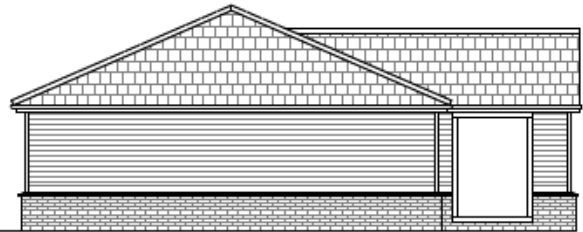
South Elevation



West Elevation



North Elevation



East Elevation

Proposed Floor Plans

APPENDIX 1
Appendix A

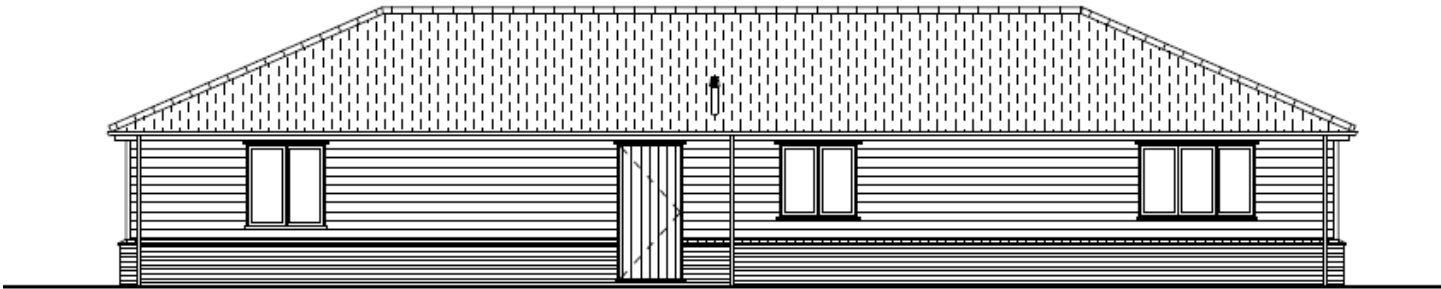
Page 46



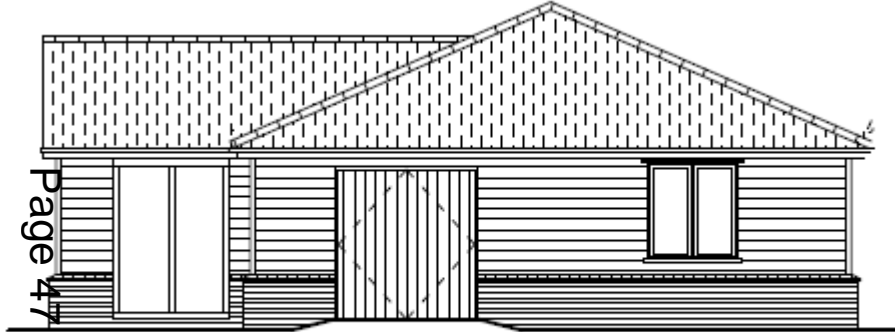
01 - Ground Floor

1 : 100

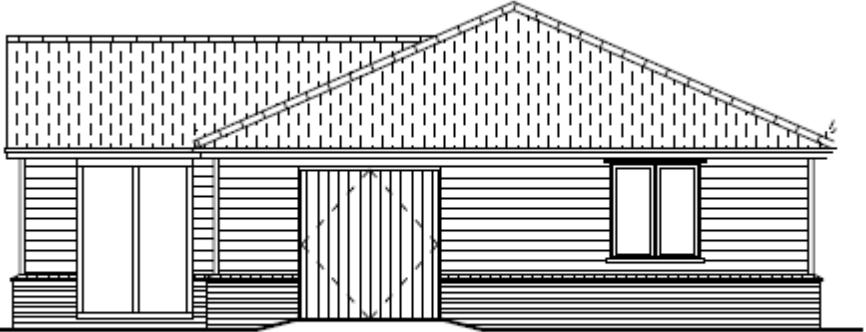
Approved Elevations



Rear (south) Elevation



Side (west) Elevation



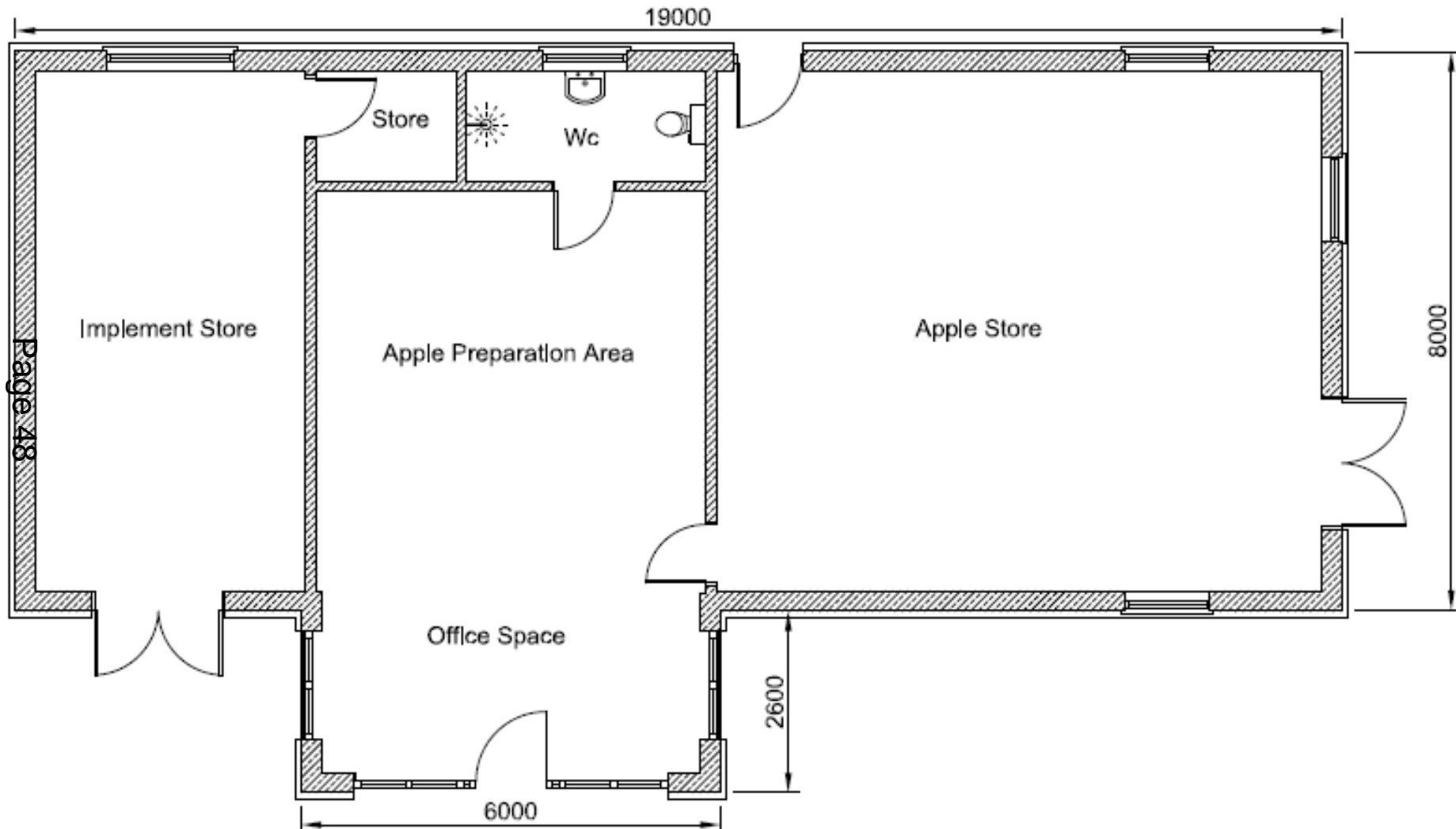
Side (west) Elevation



Front (North)
Elevation

Approved Floor Plans

APPENDIX 1
Appendix A



Site Photos



Site entrance – Postal box but there is no lawful dwelling currently on site.



Nipsells Chase



Nipsells Chase



Access track within the site

Site Photos – Application Building

APPENDIX 1
Appendix A

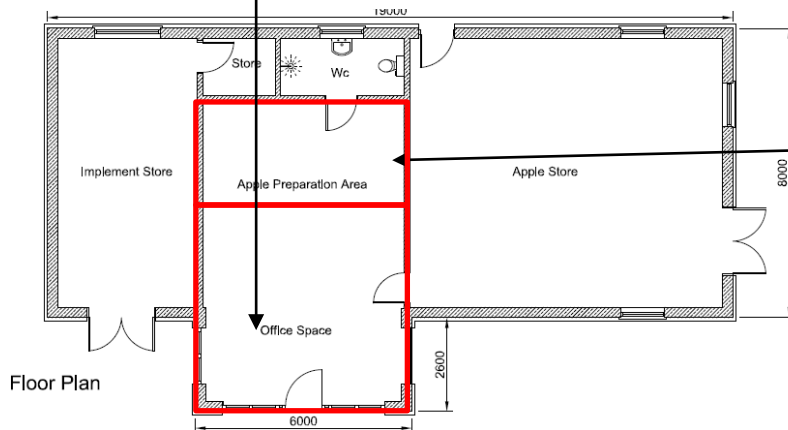


Site Photos – Interior, Prior to remedial works

APPENDIX 1
Appendix A



Page 51

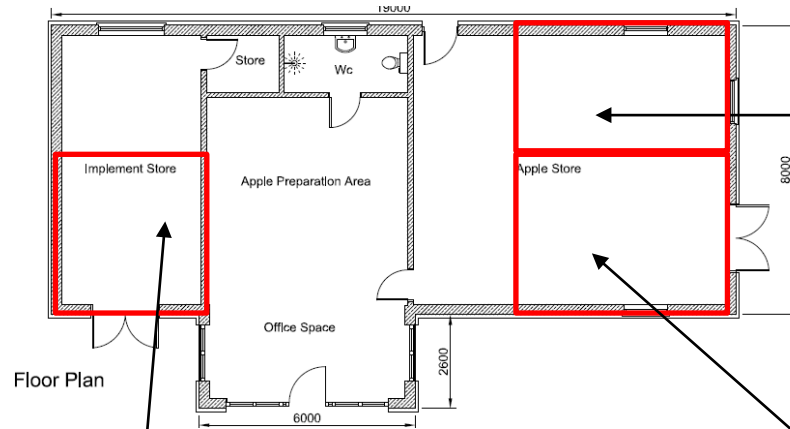


Floor Plan



Site Photos – Interior, Prior to remedial works

APPENDIX 1
Appendix A

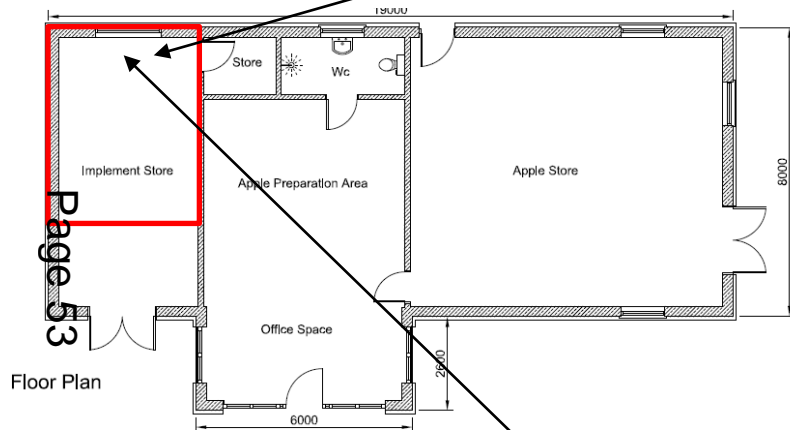


Page 52



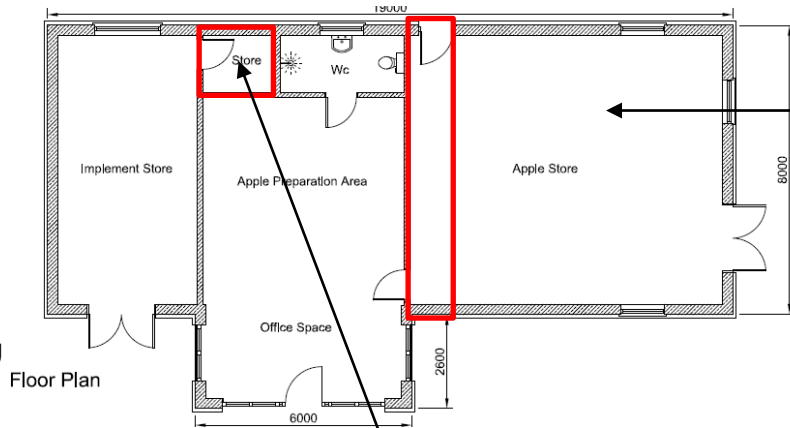
Implement Store— Interior, Prior to remedial works

APPENDIX 1
Appendix A



Apple Store– Interior, Prior to remedial works

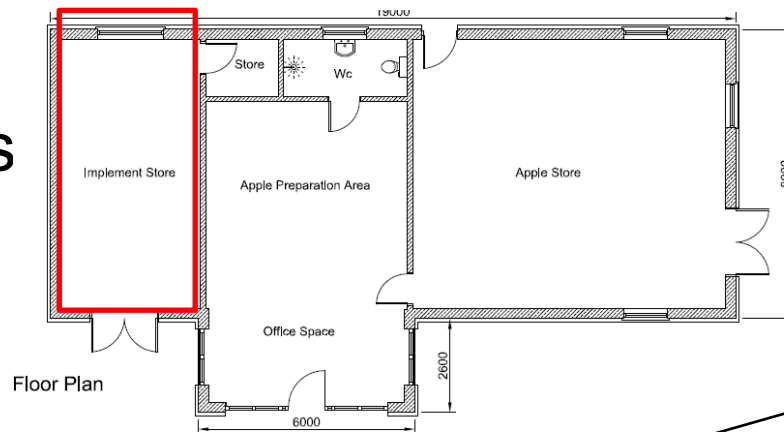
APPENDIX 1
Appendix A



Page 54



Implement Store – After remedial works



APPENDIX 1
Appendix A
Residential features
including but not
limited to, light
fittings, cills, skirting,
internal doors,
plastered walls and
ceilings and blinds

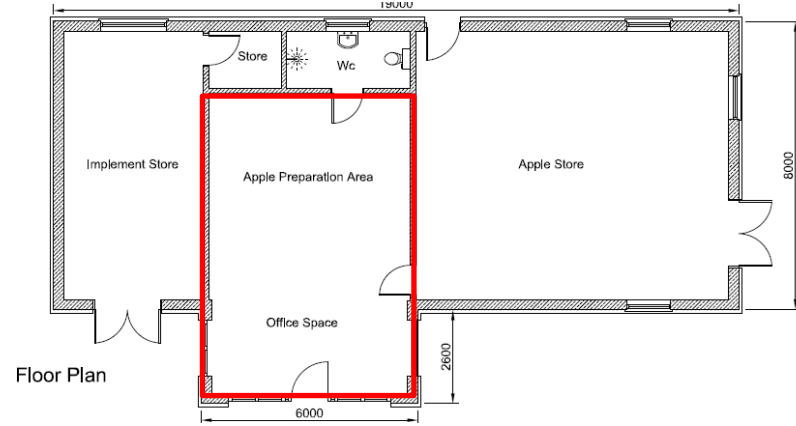


Office Space & Apple Prep Room– After remedial works

APPENDIX 1
Appendix A



Internal wall that does not form part of the original layout



Spotlights and wooden flooring.

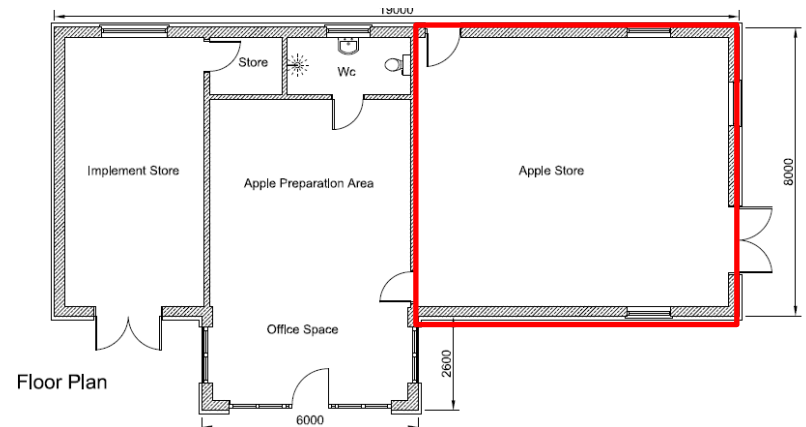


'Apple Store' – After remedial works

APPENDIX 1
Appendix A



Wooden flooring in place and being protected in parts



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