



**REPORT of
DIRECTOR OF PLANNING AND REGULATORY SERVICES**

to
CENTRAL AREA PLANNING COMMITTEE
27 JUNE 2018

Application Number	FUL/MAL/18/00480
Location	Kiosk Adjacent to The Splash Park The Promenade Park Maldon Essex
Proposal	Use of land for the temporary siting of a mobile food and drink kiosk
Applicant	Mr J Smith - S J Caterers
Agent	Mr Matthew Williams - Brimble, Lea & Partners
Target Decision Date	11 July 2018
Case Officer	Yee Cheung TEL: 01621 876220
Parish	MALDON EAST
Reason for Referral to the Committee / Council	Council Owned Land

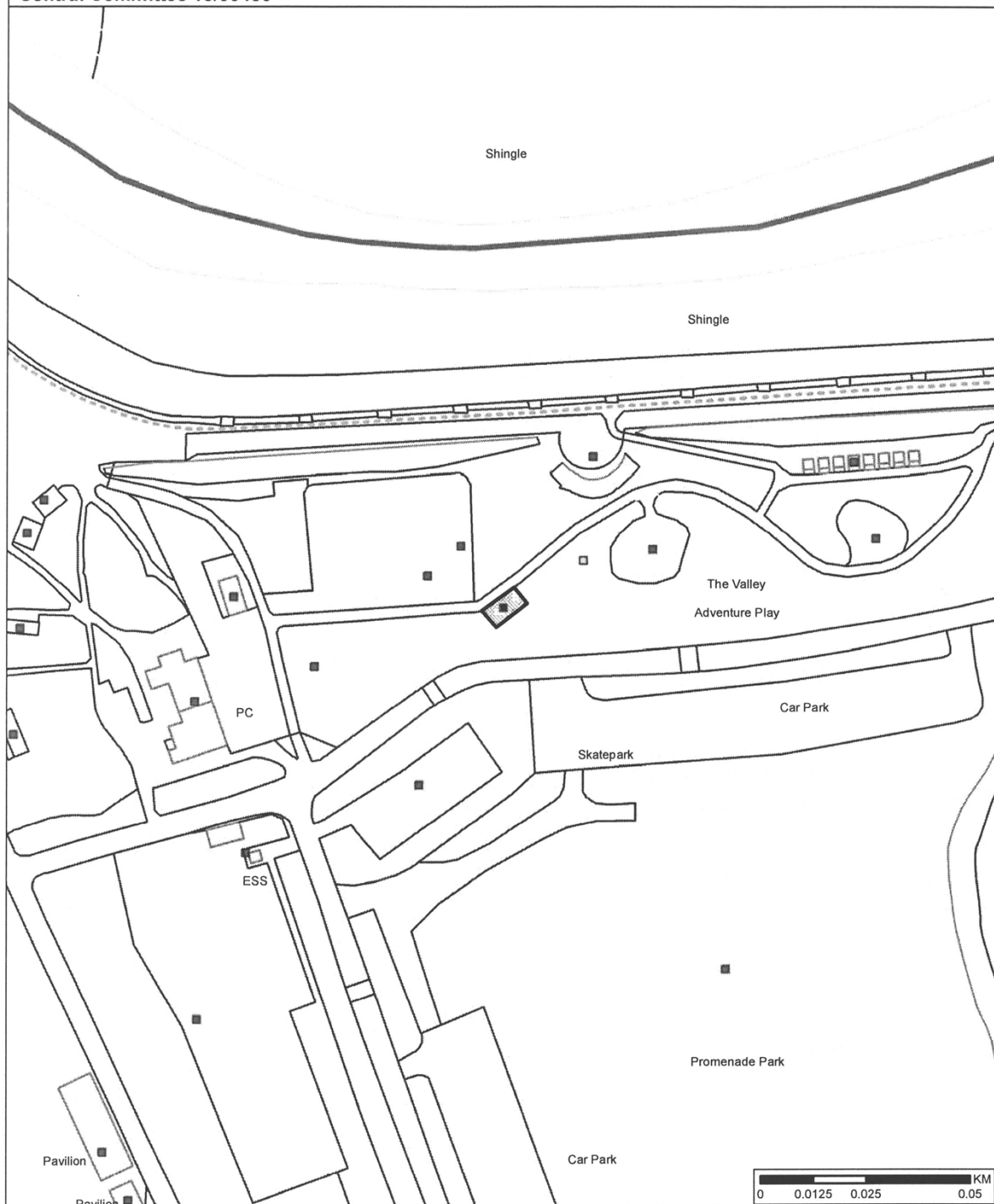
1. RECOMMENDATION

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

2. SITE MAP

Please see overleaf.

Kiosk Adjacent To The Splash Park, The Promenade Park, Park Drive, Maldon
Central Committee 18/00480



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 Maldon District Council 100018588 2014

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Scale: 1:1,250

Organisation: Maldon District Council

Department: Department

Comments: FUL/MAL/18/00480

Date: 15/06/2018

MSA Number: 100018588

3. SUMMARY

3.1 Proposal / brief overview, including any relevant background information

- 3.1.1 The application site is located within The Valley Adventure Park Area which forms part of the Maldon Promenade Park. The Valley Adventure Park Area comprises a children's play equipment area, a seating area and the Splash Park.
- 3.1.2 Planning permission is sought to position a mobile food and drink kiosk to the south eastern side of the Splash Park. The mobile food and drink kiosk measures approximately 5.5 metres wide, 3 metres deep and 4 metres in height to ridge level.
- 3.1.3 It is noted that the mobile food and drink kiosk is currently in operation as the Applicant is exercising their rights of permission under Schedule 2, Part 4, Class B (temporary use of land) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). This is discussed further in Section 5.7 of the report below.

3.2 Conclusion

- 3.2.1 Maldon District Council encourages the provision of tourist facilities and attractions that would provide facilities for residents and attract visitors to the District. The site is located within The Valley Adventure Park Area which forms a part of Maldon Promenade Park (the Park) which provides a number of tourist and leisure based facilities. It is therefore considered that the mobile food and drink kiosk located on the site temporarily for a period of two years would provide an additional leisure and recreation facility to the area. Therefore, it is considered that the principle of the development is acceptable in accordance with policies S1, D1, and E5 of the Maldon District Local Development Plan (LDP).

4. MAIN RELEVANT POLICIES

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

4.1 National Planning Policy Framework 2012 including paragraphs:

- 7 Achieving sustainable development
- 14 Presumption in favour of sustainable development
- 17 Core Planning Principles
- 30 Conserving and enhancing the historic environment
- 56-68 Requiring Good Design
- 186-187 Decision-taking
- 196-198 Determining applications

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

- S1 - Sustainable Development
- S5 - Maldon and Heybridge Central Area
- S8 - Settlement Boundaries and the Countryside

- D1 - Design Quality and Built Environment
- D3 - Conservation and Heritage Assets
- D5 - Flood Risk and Coastal Management
- E5 - Tourism
- N3 - Open Space, Sport and Leisure
- T2 - Accessibility

4.3 Relevant Planning Guidance / Documents:

- National Planning Policy Guidance (NPPG)
- National Planning Policy Framework (NPPF)

5. MAIN CONSIDERATIONS

5.1 Principle of Development

- 5.1.1 Policy E5 of the LDP states that the Council encourages the provision of tourist facilities and attractions that would provide facilities for residents and attract visitors to the District. The site is located within Maldon Promenade Park (the Park) which provides a number of tourist and leisure based facilities. It is therefore considered that the development proposal to use the site to provide a mobile food and drink facility on a temporary basis for a period of two years would contribute and support the existing leisure and recreation facilities within the park. Therefore, the principle of the development is acceptable subject to other material considerations which will be discussed in the report below.

5.2 Design and Impact on the Character of the Area

- 5.2.1 National planning policy places great importance on the design of the built environment and states that high quality design should ensure that new development is visually attractive, responsive to local character, helps to promote healthy communities, and creates buildings which are durable, adaptable, and function well within the surrounding area to create a safe and accessible environment. Good design should enable and encourage people to live healthy lifestyles, reduce the risk of crime, create accessible environments which are inclusive for all sectors of society, and increase opportunities for social interaction.
- 5.2.2 Policy D1 of the LDP states that all development must, amongst other things, respect and enhance the character and local context and make a positive contribution in terms of: (b) Height, size, scale, form, massing and proportion; (d) Layout, orientation, and density; (2) Provide sufficient and useable private and public amenity spaces; (4) Protect the amenity of surrounding areas taking into account privacy, overlooking, outlook, noise, smell, light, visual impact, pollution, daylight and sunlight.
- 5.2.3 In addition to the above, policy D3 is also applicable to the case as Promenade Park is part of a locally designated Historic Park and Gardens. This policy stipulates that development proposals that affect a heritage asset (whether designated or non-designated) and /or its setting will be required, amongst other things, to preserve or enhance its special character, appearance, setting – including its streetscape and landscape value - and any features and fabric of architectural or historic interest.

- 5.2.4 Policy N3 of the LDP states that the Council is committed to protecting and maintaining existing formal and informal open spaces, sports pitches, children's play areas, leisure and recreation facilities, while ensuring all new development contributes towards any identified local needs. The Council's policy is to enable, support and empower communities to be safe, active and healthy, as a corporate priority as well as part of the sustainable community's objectives.
- 5.2.5 Maldon District is home to many high quality leisure facilities with a regional importance such as the Promenade Park and Splash Park, Riverside Park, the Blackwater and Chelmer Navigation, the River Crouch, Five Lakes Country Club and Stow Maries Aerodrome. To improve health, well-being and active lifestyles through the provision of high quality leisure activities, the Council will generally support developments which improve the accessibility, attractiveness and recreational value of these facilities.
- 5.2.6 The proposal seeks to use the land for a mobile food and drink kiosk to be sited on a temporary basis. It will be located to the southern part of The Valley Adventure Play Area where the existing children's play equipment, seating areas and the Splash Park are currently located. The mobile food and drink kiosk would be temporary in nature and not appear visually intrusive or out of keeping with the area when viewed at a distance and in conjunction with other activities within The Valley Adventure Play Area. In this instance, it is considered that the proposal would be appropriate to the locality in accordance with policy D1 of the LDP.

5.3 Impact on Residential Amenity

- 5.3.1 The basis of policy D1 of the approved LDP seeks to ensure that development will protect the amenity of its surrounding areas taking into account privacy, overlooking, outlook, noise, smell, light, visual impact, pollution, daylight and sunlight.
- 5.3.2 The mobile food and drink kiosk is located some considerable distance away from residential properties which are to the south west, west and north west of the site. Therefore it is unlikely that the existing occupiers of these properties would be affected by the proposal in accordance with policy D1 of the LDP.

5.4 Access, Parking and Highway Safety

- 5.4.1 Policy T2 of the LDP aims to create and maintain an accessible environment, requiring a development proposal, inter alia, to sufficient parking facilities having regard to the Council's adopted parking standards. Similarly, policy D1 of the approved LDP seeks to include safe and secure vehicle and cycle parking having regard to the Council's adopted parking standards and maximise connectivity within the development and to the surrounding areas including the provision of high quality and safe pedestrian, cycle and, where appropriate, horse riding routes.
- 5.4.2 The Council's adopted Vehicle Parking Standards SPD contains the parking standards which are expressed as maximum standards. This takes into account Government guidance which encourages the reduction in the reliance on the car and promotes methods of sustainable transport.

- 5.4.3 The use of the land for a mobile food and drink kiosk would not have an impact on the existing parking spaces within the park or obstruct the free flow of pedestrians using the site. Having considered the position of the mobile food and drink kiosk and its temporary nature within the site, it is not considered that any car parking spaces would be lost. In this instance, the proposal would accord with policies D1 and T2 of the LDP.

5.5 Private Amenity Space and Landscaping

- 5.5.1 Having considered the temporary nature of the development and the location of the mobile food and drink kiosk, it is not considered that any private amenity space or landscaping will be affected by this proposal. In this respect, the proposal would accord with policy D1 of the LDP.

5.6 Flood Risk

- 5.6.1 The application site lies within tidal Flood Zone 3 defined by the 'Planning Practice Guidance: Flood Risk and Coastal Change' as having a high probability of flooding. The NPPG identifies that the Sequential Test aims to steer new development to areas with the lowest probability of flooding, with the aim to steer development towards Flood Zone 1. LPAs are required to take into account the vulnerability of land uses and consider reasonably available sites where possible in Flood Zone 2. It is only when there is no reasonably available land within Flood Zone 1 or 2 that sites can be considered in Flood Zone 3, taking into account the vulnerability of the land use and applying the exceptions tests (where required).
- 5.6.2 The proposal is to use the land to site a mobile food and drink kiosk. The recreational activity falls under 'Water-compatible development' as defined in the NPPG and therefore to comply with the NPPG, the application would need to pass the Sequential Test only and not the Exception Test. An Exception Test would not be required in this instance as the proposal is deemed as appropriate development (Paragraph: 066 Reference ID: 7-066-20140306 Revision date: 06 03 2014, NPPG).
- 5.6.3 In terms of the Sequential Test, as part of the Flood Risk Assessment (FRA) received by the Council on 19 April 2018 - Covering letter and 27 April 2018 prepared by Brimble Lea & Partners), the Applicant acknowledges that the site falls within Flood Zone 3 (FZ) but considers that *'the nature and period of the proposed use, which is classified in the NPPG as being 'water-compatible', will not be placed at an unacceptable risk of flooding or increase the risk of flooding. The proposal is to provide a recreational activity for visitors to the park and it will therefore not increase the number of people present in an area at risk of flooding. The very nature of the park is that people will not visit if localised flooding is forecast ... Any run-off from recreational equipment will literally trickle off and drain through the ground. As such, the proposal will not increase the risk of flooding elsewhere'*. In this instance, it is considered that the Sequential Test has been passed as there is no other land available within Promenade Park for development expansion to accommodate such proposed use to take place.
- 5.6.4 Having considered the temporary nature of the mobile food and drink kiosk and that its use would be seasonal (March - October), it is considered that the proposal would be of low risk. The Environment Agency and Emergency Planner were both

consulted but no response has been received at the time of writing this report. The Emergency Planner has assessed the proposal and advised that the site is within a high risk flood zone and that consideration is made to a condition for a flood warning and evacuation plan being drawn up for the kiosk in order for all staff to be informed of the evacuation and warning procedures should the application be approved.

5.7 Other Material Considerations

- 5.7.1 It is noted that the Town Council has raised concerns that the application is a retrospective application and that the mobile food and drink kiosk is in operation. The Applicant can operate on the land for 28 days, in total in any calendar year, which includes *'the provision on the land of any moveable structure for the purposes of the permitted use'* without planning permission under Schedule 2, Part 4, Class B (temporary use of land) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). After 28 days, the mobile food and drink kiosk would have to be removed from site. This is a reason why the mobile food and drink kiosk has been in operation without planning permission and therefore is not retrospective in nature.
- 5.7.2 The Council has considered to grant temporary consent for the mobile food and drink kiosk for a period of two years. The reason to impose this condition is to give the Council the opportunity to reassess the impact of the proposal after a set period of time, and to ensure that the development would not impact on nearby residential amenity and that no permanent harm is caused to the character and appearance of the local designated park in accordance with policies D1, D3 and N3 of the LDP and Guidance contained in the National Planning Policy Framework (NPPF).
- 5.7.3 Promenade Park is a part of the locally designated Historic Park and Garden as contained in the LDP. As the park is a local designation and not a national designation which would normally require consultation with Historic England, the Conservation Officer has been consulted in this instance. It was assessed that the proposal would not cause harm to the setting or significance of the conservation area in accordance with policies D3 and N3 of the LDP.

6. ANY RELEVANT SITE HISTORY

- **FUL/MAL/16/00629** - Temporary planning permission for two catering units. Approved: 28.07.2016
- **FUL/MAL/14/00819** - 18 hole adventure golf course with additional 19th free game hole. To include pirate themed props and structures with cafeteria and clad storage containers. Approved: 31.10.2014
- **FUL/MAL/14/00240** - Installation of 8 no. beach huts for leisure and recreational use. Approved: 29.05.2014
- **FUL/MAL/11/00811** - Amendment to **FUL/MAL/11/00334** - to increase boundary fence height from 2m to 3m. Increase length to incorporate east, south and partial west boundaries of depot site. Screen fencing by planting mixed native hedging inter-planted with standard native trees. Approved: 18.11.2011
- **FUL/MAL/11/00334** - Demolition of dilapidated vehicle and machinery storage sheds and garages. Erection of new and extension to existing

agricultural style vehicle and machinery stores for secure parking of tractors, plant and machinery. Erection of staff welfare accommodation building. Associated landscape works, fencing and gates. Use of part of depot for overnight parking of waste contractors vehicles. Approved: 29.06.2011

- **FUL/MAL/10/00542** - Extension to existing clubhouse forming changing rooms, referees room, tennis club office with associated showers and toilets. Approved: 24.09.2010
- **FUL/MAL/09/01084** - Retention of the existing container store. Approved: 27.04.2010
- **FUL/MAL/09/00586** - Proposed extension to existing changing facilities at Promenade Park. Extension to accommodate lobby, store and changing rooms with additional showers and w/c's. Approved: 02.02.2010
- **FUL/MAL/07/01258** - Alterations and extension to existing clubhouse including new access ramp, replacement windows and doors and new roof. Approved: 23.01.2008
- **FUL/MAL/07/01141** - 6m x 3m (approx) storage container to house equipment. Approved: 23.01.2008
- **FUL/MAL/06/00747** - Demolition of changing rooms and erection of four changing rooms. Approved: 17.10.2006
- **FUL/MAL/05/01120** - Erection of Statue. Refused: 16.12.2005
- **FUL/MAL/05/00813** - Replacement fencing comprising galvanised weld mesh fencing to tennis courts. Approved: 04.10.2005
- **FUL/MAL/05/00811** - Increase in size of Pump House - amendment to planning permission **FUL/MAL/05/00185**. Approved: 04.10.2005
- **FUL/MAL/05/00490** - Erection of monument to the Battle of Maldon including bronze sculpture of Byrhtnoth. Refused: 05.08.2005
- **FUL/MAL/05/00185** - 1. Reconstruction of sea wall in order to raise flood defence level and maintain stability. 2. Installation of adventure and water play equipment in the valley area. Erect pump house and office store buildings. 3. Reconstruction of boating lake and deposition of excavated materials. Approved: 18.04.2005
- **FUL/MAL/04/01260** - Demolition of changing rooms and cricket pavilion and erection on same site of four changing rooms and sports pavilion. Approved: 20.01.2005
- **FUL/MAL/04/00894** - Proposed Cafeteria/restaurant and life guard station office. Approved: 09.12.2004
- **FUL/MAL/02/00769** - Demolition of storage sheds and erection of new shed for tractor storage. Approved: 07.10.2002
- **FUL/MAL/00/00474** - Proposed erection of a bronze Saxon Byrhtnoth statue. Approved: 28.07.2000

7. CONSULTATIONS AND REPRESENTATIONS RECEIVED

7.1 Representations received from Parish / Town Councils

Name of Parish / Town Council	Comment	Officer Response
Maldon Town Council	No objection to the proposal but regrets that this is retrospective.	Noted

7.2 Statutory Consultees and Other Organisations

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
Environment Agency	No comments received at the time of writing this report	Any comments received will be reported on the Members Update
Emergency Planner	A condition for a flood warning and evacuation plan being drawn up for the kiosk in order for all staff to be informed of the evacuation and warning procedures should the application be approved.	Noted in Section 8 of the officer report
Essex County Council Highways Authority (ECC)	No objection to the proposal	Noted in the officer report

7.3 Internal Consultees

Name of Internal Consultee	Comment	Officer Response
Conservation Officer	This application falls outside of the Maldon Conservation Area. The proposal will cause no harm to the setting or significance of the conservation area	Noted
Environmental Health Services	No observations to make the application	Noted
Economic Development Team	No objections to this temporary installation of bungee trampolines in the	Noted

Name of Internal Consultee	Comment	Officer Response
	Promenade Park as it will attract visitors and additional economic spend to the Maldon District	

7.4 Representations received from Interested Parties

7.4.1 Letters of objection were received and the comments are summarised as set out in the table below:

Objection Comment	Officer Response
<ul style="list-style-type: none"> • Kiosk selling food and ice cream is not appropriate as there are plenty of outlets outside The Valley Adventure Play Area • There is an almost identical kiosk at the golf area – unfairly competitive • Insufficient space for the kiosk and bungee trampoline to be located within the site • A large section of the amenity space has been made unusable by the proposal • Smells and noise 	<ul style="list-style-type: none"> • The Council notes that there are outlets outside The Valley Adventure Play Area but this does not prevent the Applicant for submitting a planning application for an additional kiosk • Competition between kiosks is not a material consideration • Based the plans submitted, there appears to be sufficient space for the temporary structures to be located within the site. • The Valley Adventure Play Area is approximately 1 hectare in site area. The kiosk and bungee trampoline will occupy an area of land approximately 115sqm. Therefore it is not considered that a large section of the amenity space has been made unusable by this proposal • The Environmental Health Services has been consulted and has advised that there are no observations to make on this application.

8. PROPOSED CONDITIONS

- 1 The development hereby permitted shall be carried out in complete accordance with the approved drawing 18064-01 dated 18.04.2018 and 18064-03 dated 16.05.2018 specifically referenced on this decision notice.

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

- 2 The mobile food and drink kiosk hereby permitted shall be removed and the land restored to its former condition on or before 14 September 2020 unless before that date a formal planning application for the retention of the mobile food and drink kiosk has been approved by the local planning authority.

REASON It is not considered that the grant of a permanent planning permission would be appropriate and a temporary permission would be acceptable in this instance to enable the Local Planning Authority to reassess the impact of the development on the character and appearance of the area in accordance with policies policy D1 of the Maldon District Local Development Plan.

- 3 Within one month of granting this planning permission, weatherproof signs shall be displayed within the building, which comprehensively describe the site evacuation procedures in the event of a flood. The signage shall be retained thereafter.

REASON: To ensure that all users of the development are aware that the site is at risk of flooding in accordance with policy D5 of the Maldon District Local Development Plan, and government advice contained within the National Planning Policy Framework and Planning Practice Guidance