



**REPORT of
DIRECTOR OF STRATEGY, PERFORMANCE AND GOVERNANCE**

to
**NORTH WESTERN AREA PLANNING COMMITTEE
4 FEBRUARY 2019**

Application Number	FUL/MAL/18/01425
Location	The Pavilion Braxted Park Braxted Park Road Great Braxted
Proposal	Retention of Pavilion at Braxted Park
Applicant	Braxted Capital Management Limited
Agent	Mrs Nicola Bickerstaff - Strutt And Parker
Target Decision Date	23.01.2019
Case Officer	Hannah Bowles
Parish	GREAT BRAXTED
Reason for Referral to the Committee / Council	Member call in from Councillor Keys due to public interest.

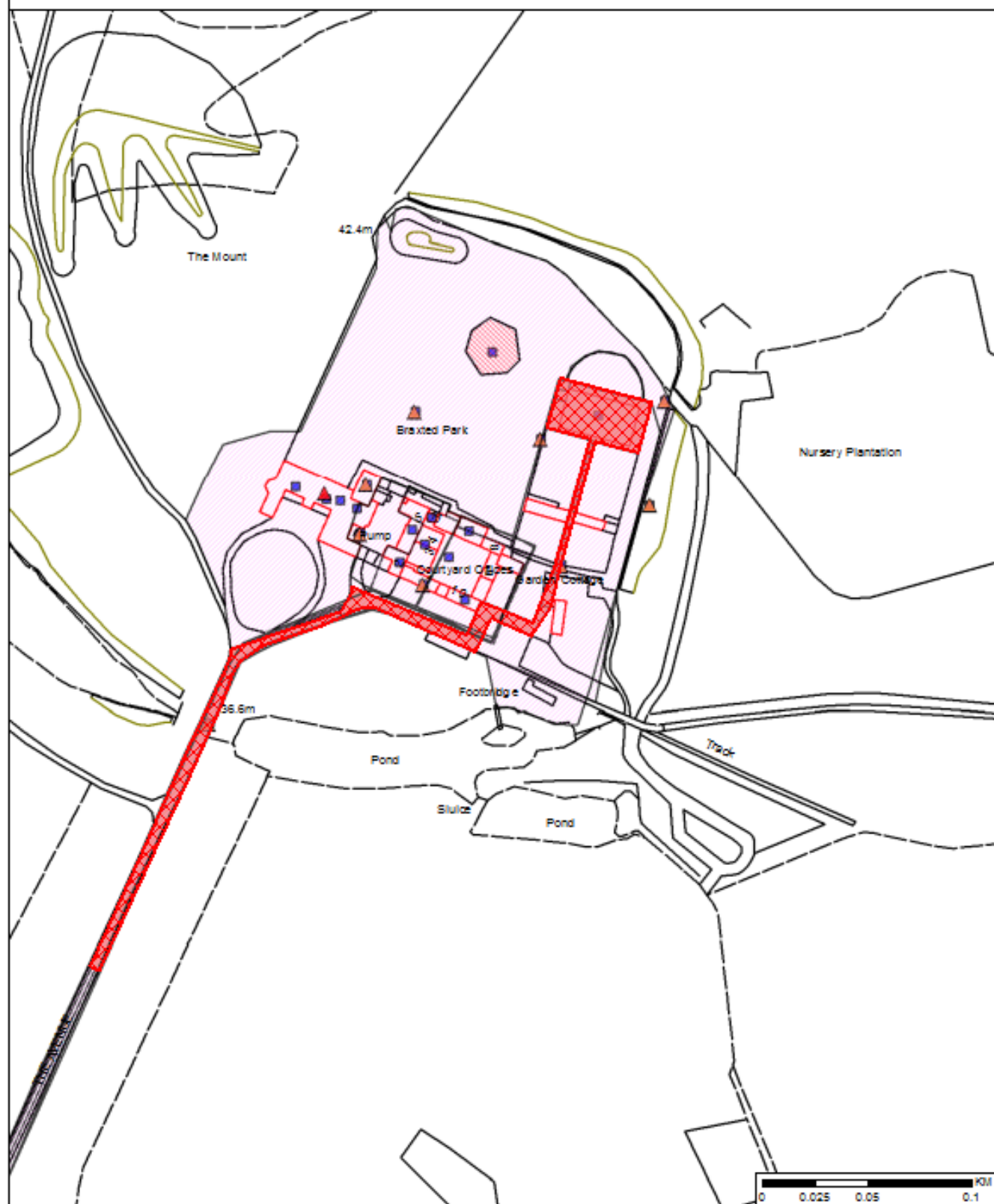
1. RECOMMENDATION

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

2. SITE MAP

Please see overleaf.

The Pavilion Braxted Park Braxted Park Road Great Braxted



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	Organisation: Maldon District Council
	Department: Planning Services
	Comments:
	Date: 23/01/2019
MSA Number: 100018588	

3. SUMMARY

3.1 Proposal / brief overview, including any relevant background information

- 3.1.1 Braxted Park House is a Grade II* Listed Building and Braxted Park is included within Historic England's Register of 'Parks and Gardens of Special Historic Interest'. Within the grounds of the house are a number of other buildings and structures listed in their own right.
- 3.1.2 The application relates to the walled kitchen garden to the east of the Grade II* listed house and adjoins part of the private gardens associated with Braxted Park House along its northern boundary. The walls are Grade II listed in their own right, in recent years the walls, together with the kitchen garden and glasshouses have been restored them to their former glory. A dwelling known as 'Garden Cottage' is located to the south of the walled garden within the Braxted Park grounds. The site is located approximately 400m north of Braxted Road. There are a number of dwellings on the southern side of Braxted Road some of which are directly opposite the access to Braxted Park.
- 3.1.3 Planning permission is sought to permanently retain the existing pavilion within the walled garden of the Braxted Park Estate.
- 3.1.4 Temporary planning permission was given in February 2005 by application FUL/MAL/04/00986 and LBC/MAL/04/00988 for the construction of a marquee within the listed walled garden of Braxted Park. A condition (3) was imposed upon applications FUL/MAL/04/00986 and LBC/MAL/04/00988 requiring the dismantling of the marquee between 2 January and Maundy Thursday of each year.
- 3.1.5 Planning permission was subsequently granted in August 2005 for the non-compliance with condition 3 of FUL/MAL/04/00986 and LBC/MAL/04/00988 for a seven year term which expired in September 2012.
- 3.1.6 A further application for the variation of condition 3 of approved planning permission FUL/MAL/04/00986 and LBC/MAL/04/00988 to allow the marquee to be present all year round for a further period of 7 years was granted permission on 1st October 2012 and is due to expire on 1st October 2019.
- 3.1.7 Planning permission is sought to permanently retain the existing pavilion within the walled garden of the Braxted Park Estate with a restrictive condition tying the use and permanence of the pavilion to the applicant 'Braxted Capital Management Limited'. However, for reasons discussed below, it is considered that this condition cannot be imposed.

3.2 Conclusion

- 3.2.1 The harm caused to the grade II listed walls of the kitchen garden by the proposed permanent erection of the Pavilion would not be outweighed by public benefits. Therefore, the proposed development is considered to be contrary to policy D3 of the Maldon District Local Development Plan (MDLDP) and the guidance contained within the National Planning Policy Framework (NPPF).

4. MAIN RELEVANT POLICIES

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

4.1 National Planning Policy Framework 2018 including paragraphs:

- 8 Three objectives of sustainable development
- 10-12 Presumption in favour of sustainable development
- 38 Decision-making
- 47-50 Determining applications
- 102-111 Promoting sustainable transport
- 117-118 Making effective use of land
- 124-132 Achieving well-designed places
- 184-192 Conserving and enhancing the historic environment

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

- S1 Sustainable Development
- S8 Settlement Boundaries
- E3 Community Services and Facilities
- D1 Design Quality and Built Environment
- D3 Conservation and Heritage Assets
- H4 Effective Use of Land
- T1 Sustainable Transport
- T2 Accessibility

4.3 Relevant Planning Guidance / Documents:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

5. MAIN CONSIDERATIONS

5.1 Principle of Development

- 5.1.1 The pavilion already exists at the site having been first granted to support the maintenance of the listed buildings at the site and the grounds. The pavilion has had three previous temporary planning permissions (FUL/MAL/04/00986, FUL/MAL/05/00665 and FUL/MAL/12/00250). The 2004 application allowed the erection of a marquee, but required its dismantling for part of the year. The 2005 permission allowed for the permanent erection of the marquee for a 7 year period extension that was. Subsequently the 2012 application granted temporary permission until 01 October 2019. Therefore the pavilion remains a temporary structure.

- 5.1.2 It is noted that host buildings of this type are often used for purposes such as wedding/function venues and in this regard it is considered that the use has some economic and community benefits and can draw broad support from the NPPF.
- 5.1.3 This application proposes to permanently retain the pavilion with a restrictive condition restricting the use to the applicant 'Braxted Capital Management Limited'. However, it is not possible to tie a planning permission to a business. PPG states '*A condition limiting the benefit of the permission to a company is inappropriate because its shares can be transferred to other persons without affecting the legal personality of the company.*' This condition would therefore not be reasonable and any reliance upon it should be disregarded.
- 5.1.4 The proposal would result in the permanent erection of the pavilion which was specifically not supported at the time of the last application. As will be discussed further below, even with regard being had to the benefits of the proposal, 'less than substantial' harm has been identified that is not outweighed by public benefits and it is clear that the application is contrary to the policy D3 of the MDLDP which states:
- Development proposals that affect a heritage asset (whether designated or non-designated) and / or its setting will be required to:*
- 1) *Preserve or enhance its special character, appearance, setting – including its streetscape and landscape value - and any features and fabric of architectural or historic interest;*
- 5.1.5 PPG states that '*It will rarely be justifiable to grant a second temporary permission – further permissions should normally be granted permanently or refused if there is clear justification for doing so. There is no presumption that a temporary grant of planning of planning permission should be granted permanently.*' Notwithstanding that the proposal is for the permanent retention of the pavilion and that the above guidance, given the importance of the pavilion to the wedding/functions business at Braxted Park and to allow time to find an alternative scheme to be identified, Officers have invited the applicant to make a case to justify the granting of a further temporary permission. However, this suggestion has been rejected by the applicant. Therefore, as it is considered that there is not an appropriate condition that could satisfy the wishes of the applicant and appease the concerns raised by Officers, it is recommended that the application is refused.

5.2 Impact on the Setting of the Listed Building

- 5.2.1 The planning system promotes high quality development through good inclusive design and layout, and the creation of safe, sustainable, liveable and mixed communities. Good design should be indivisible from good planning. Recognised principles of good design seek to create a high quality built environment for all types of development.
- 5.2.2 Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the Council to pay special attention to desirability of preserving or enhancing the character or appearance of the conservation area. Similarly, policy D3 of the approved MDLDP states that development proposals that affect a heritage assets must preserve or enhance its special character, appearance, setting and any features and

fabric of architectural or historic interest. Where a proposed development would cause less than substantial harm to the significance of a designated heritage asset, this harm will be weighed against the public benefits of the proposal, including securing its optimum viable use.

- 5.2.3 The pavilion, which has been in situ since 2005, is not visible from public vistas and therefore does not impact the wider area.
- 5.2.4 It is clear from the planning history of the application site and the comments provided by the Conservation Officer that the pavilion results in minor/moderate harm to the setting of the walled garden and that the pavilion was not intended to be a permanent structure on site.
- 5.2.5 When considering the initial applications in 2004 it was accepted that the erection of a pavilion, although quite large, would be unlikely to materially harm the setting of the listed building or compromise the concept of Grade II Walled Garden providing that it was not stationed on the land in perpetuity. As the scheme incorporated significant benefits to restore and enhance the former character of the garden with extensive planting, formal garden design and features together with the refurbishment of the glasshouses, it was accepted that such benefits would outweigh the impact of the temporary pavilion.
- 5.2.6 Whilst the pavilion is not a particularly prominent feature in the setting of the other nearby heritage assets and does not harm their significance. The setting of Grade II listed wall is affected. In this regard it is noted that the Conservation Officer has stated that:
- “Much of the structure is concealed by the listed garden wall. It almost completely fills the northern compartment of the walled garden, meaning that the internal space of this part of the garden cannot be appreciated as it was intended to be while the structure is in place. Visually, it is a somewhat discordant feature due to its modern form and materials which contrast with the traditional character of the gardens. On the other hand, it is a simple and unostentatious structure. Its tent-like appearance gives it a temporary character, so that it is not read as a permanent alteration to the walled garden. I would describe the harm caused by the pavilion to the significance of the garden as minor / moderate.”*
- 5.2.7 When viewing the kitchen garden outside of the walls, the roof of pavilion protrudes slightly above the tops of the walls. This has some minor impact on the appreciation of the walled garden from outside.
- 5.2.8 The harm, identified above, must be weighed against the public benefits of the proposal which include heritage benefits, having first given special regard to the desirability or preserving the setting of the heritage assets affected in accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- 5.2.9 At the time of the application in 2012 for a further temporary permission, it was stated by the Conservation Officer *‘No objection to vary Condition 3 of approved planning permission FUL/MAL/04/00986 to allow the marquee to be constructed all year round for a further period of seven years. This would enable dialogue and discussion with English Heritage and the Applicant to address the marquee and the need of a*

permanent structure on site. The Conservation Officer objects to the permanent retention of the marquee. ' Furthermore within the assessment of that application it states '*Based upon the information submitted by the applicant, it is evident that there is a need for a structure for wedding functions/corporate events. By giving a temporary consent, the Council could start liaising with the applicant for a permanent structure elsewhere within the Braxted Park Estate that would have less of an impact to the Grade II listed wall garden.*' It was considered at that time that it would be the final temporary consent granted for the pavilion and that a permanent structure in an alternative location, which caused less harm, would be discussed before the expiration of the 2012 permission. It is noted that the applicant has considered and ruled out a permanent structure on the application site on financial grounds. However, this is not considered to justify or outweigh the identified harm caused by the permanent erection of the pavilion.

5.2.10 The above assessment is in line with the Conservation Officers views and those within the previous applications.

5.2.11 Whilst the Council acknowledge that the pavilion is an integral part of wedding/functions business, the harm identified to the setting of the listed wall and the fact this harm would continue perpetually. In this instance the harm is considered to outweigh the benefits of the scheme.

5.3 Impact on Residential Amenity

5.3.1 Historically, no concerns have been raised in relation to the impact on the residential amenity of the neighbouring dwellings. There are no new material considerations, under the terms of this application that would alter this stance.

5.4 Access, Parking and Highway Safety

5.4.1 Historically, no concerns have been raised in relation to access, parking and highway safety. There are no new material considerations, under the terms of this application that would alter this stance.

6. ANY RELEVANT SITE HISTORY

- **FUL/MAL/04/00986** - Proposed venue for weddings/corporate events and associated facilities. Erection of a marquee and renovation/restoration of stores and glasshouses. Approved.
- **LBC/MAL/04/00988** - Proposed venue for weddings/corporate events and associated facilities. Erection of a marquee and renovation/restoration of stores and glasshouses. Granted.
- **FUL/MAL/05/00665** - Non-compliance with 3 imposed upon Listed Building Consent LBC/MAL/04/00988 to permit the permanent erection of marquee in relation to use of walled garden for weddings and corporate events. Approved
- **LBC/MAL/05/00705** - Non-compliance with 3 imposed upon Listed Building Consent LBC/MAL/04/00988 to permit the permanent erection of marquee in relation to use of walled garden for weddings and corporate events. Granted.

- **FUL/MAL/12/00250** - Variation to Condition 3 of approved planning permission FUL/MAL/04/00986 to allow the marquee to be constructed all year round for a further period of 7 years. Approved.

7. CONSULTATIONS AND REPRESENTATIONS RECEIVED

7.1 Representations received from Parish / Town Councils

Name of Parish / Town Council	Comment	Officer Response
Great Braxted Parish Council	Support.	Noted.

7.2 Statutory Consultees

Name of Statutory Consultee	Comment	Officer Response
Historic England	Historic England has no objection to the application on heritage grounds. While we do have concerns, we consider that the application meets the requirements of the NPPF, in particular paragraph numbers 196.	Noted.

7.3 Internal Consultees

Name of Internal Consultee	Comment	Officer Response
Conservation Officer	The degree of harm in this instance is minor / moderate. This harm must be weighed against the public benefits of the proposal (which include heritage benefits) having first given special regard to the desirability or preserving the setting of the listed buildings. From this basis the Officer is supportive of approval for temporary consent but not permanent retention.	Noted.

8. REASONS FOR REFUSAL

The harm caused to the Grade II listed walls by the proposed permanent erection of the Pavilion would not be outweighed by public benefits. Therefore, the proposed development is considered to be contrary to policy D3 of the MDLDP and the guidance contained within the NPPF.