



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

**to
SOUTH EASTERN AREA PLANNING COMMITTEE
11 FEBRUARY 2019**

Application Number	FUL/MAL/18/01470
Location	Hardy's Bar And Grill, 36 Imperial Avenue, Mayland
Proposal	Vary condition 3 and Removal of condition 4 of approved application FUL/MAL/11/00247 (Single storey rear extension and alterations to public house with conversion of first floor to 4 one bedroomed flats. Single storey block of 5 motel units and laundry room with associated parking and amenity space).
Applicant	Mrs Fay Collin
Agent	Mr Mike Otter - GPO Designs Ltd
Target Decision Date	05.02.2019
Case Officer	Nicola Ward, TEL: 01621 875864
Parish	MAYLAND
Reason for Referral to the Committee / Council	Member Call In: Councillor M W Helm – Public Interest Councillor Mrs P A Channer – Public Interest Councillor Mrs B F Acevedo – Public Interest

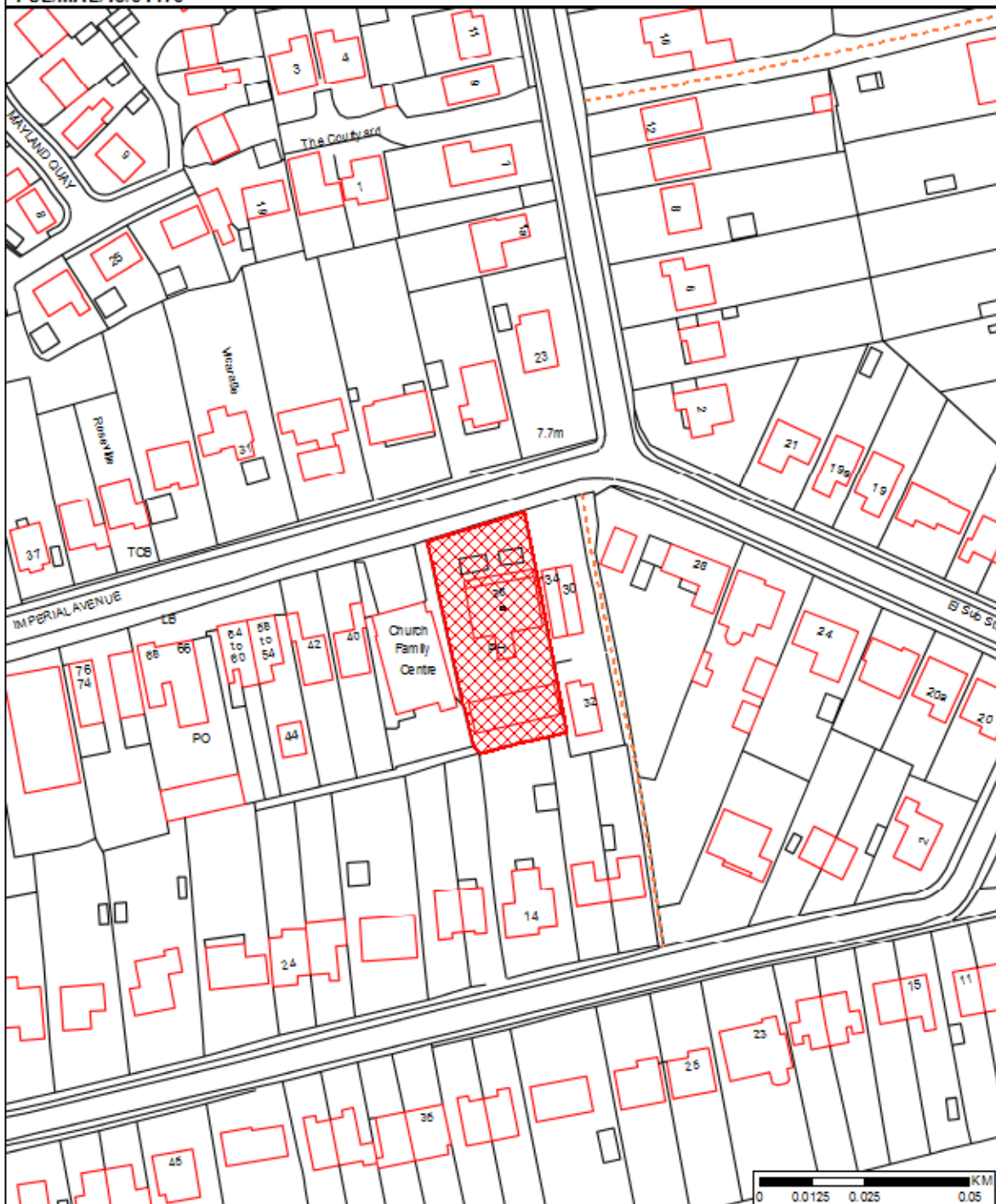
1. RECOMMENDATION


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

2. SITE MAP

Please see overleaf.

Hardy's Bar and Grill 36 Imperial Avenue
FUL/MAL/18/01470



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	Organisation:	Maldon District Council
	Department:	Department
	Comments:	FUL/MAL/18/01470
	Date:	1/28/2019
	MSA Number:	100018588

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3. SUMMARY

3.1 Proposal / brief overview, including any relevant background information

3.1.1 The proposed development would involve the removal of condition 4 that restricts the use of the four flats above the public house to be occupied by a manager or persons employed by the public house, and for the variation of condition 3 to provide additional amenity space for the occupiers of the motel units and the residential units within the public house.

3.1.2 This application is for the variation of the wording of the condition 3 of planning permission FUL/MAL/11/00247 from:

Condition 3: 'The communal grassed garden amenity areas as shown upon the approved plan which is attached to and forms part of this permission shall be laid out and available for use as amenity space for the occupants of all the flats and motel units hereby permitted within 3 months of first occupation of the flats and retained for such purposes thereafter.'

3.1.3 To:

Condition 3: 'The amenity area shown on the updated plan submitted with this application (Ref: 36CM36AQ_BP1.2) shall be laid out and available for use as amenity space for the occupants of all the flats and motel units hereby permitted within 3 months of first occupation of the flats and retained for such purposes thereafter.'

3.1.4 In this regard, noting that the applicant states that the flats have already been occupied, it would be necessary to amend this suggested condition to require compliance within a specified period after the granting of permission. The application also seeks removal of condition 4 which states:

Condition 4: 'The four flats hereby permitted shall only be occupied by persons wholly or mainly employed at the Public House to which they relate.'

3.2 Conclusion

3.2.1 It is considered that the variation of condition 3 to revise the amenity plan submitted as part of application reference FUL/MAL/11/00247, would provide additional amenity space and therefore would be acceptable and would not have a detrimental impact on the appearance of the area and application site.

3.2.2 The removal of condition 4 to allow the 4 units above the public house to be let to persons not associated with the public house would enable the formation of self-contained residential units. Whilst it is noted the size and layout of the units are acceptable in terms of light and outlook, the occupiers of the unit would be likely to be adversely affected by noise and disturbance from the public house. It is therefore considered that the removal of condition 4 would enable a use of the land to occur that would not be in accordance with policies D1, D2 and H4 of the Local Development Plan (LDP) and 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:

- 2-14 Achieving sustainable development
- 11 Presumption in favour of sustainable development
- 38 Decision-making
- 47 – 50 Determining applications
- 54 – 57 Planning conditions and obligations
- 80 – 84 Building a strong, competitive economy
- 128 – 132 Achieving well-designed places
- 170 - 183 Conserving and enhancing the natural environment

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

- S1 Sustainable Development
- S8 Settlement Boundaries and the Countryside
- D1 Design Quality and Built Environment
- D2 Climate change & Environmental Impact of New Development
- H4 Effective Use of Land
- E3 Community facilities
- T1 Sustainable Transport
- T2 Accessibility

4.3 Relevant Planning Guidance / Documents:

- National Planning Policy Framework (NPPF)
- Essex Design Guide
- National Planning Policy Guidance (NPPG)

5. MAIN CONSIDERATIONS

5.1 Principle of Development

- 5.1.1 The application site is located within the development boundary of Mayland and therefore, the principle of providing residential accommodation is acceptable, subject to all other policy requirements being met.
- 5.1.2 The subject application is a re-submission of a previously refused application FUL/MAL/18/00950 which sought the variation of conditions 4, 7, 8 & 9 on approved planning permission FUL/MAL/11/00247. The reason for refusal was as follows:

'The variation of conditions would result in residential accommodation being provided that would not be served by adequate living conditions as a result of the relationship of that accommodation with neighbouring uses, the inadequate

provision of amenity space and a lack of light and outlook from within that accommodation. The proposed variation of conditions is therefore unacceptable and contrary to policies D1 and H4 of the Maldon District Local Development Plan and the National Planning Policy Framework.'

- 5.1.3 Whilst it is noted that application reference FUL/MAL/18/00950, included the variation of conditions to allow the motel units to be used as residential units in addition to the units above the public house, the reason for refusal regarding the concerns raised in relation to the living conditions would need to be overcome. It should be noted that the concerns about lack of light and outlook were directed towards the motel units only and not the units within the main public house building.

5.2 Design and Impact on the Character of the Area

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

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

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

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

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

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

- 5.2.4 Similar support for high quality design and the appropriate layout, scale and detailing of development is found within the Maldon District Design Guide (MDDG) (2017).
- 5.2.5 The proposed removal of condition 4 would not result in any external alterations to the buildings at the site and as such there are no building operations that would impact on the character and appearance of the site and the surrounding area. The removal of the condition would result in four additional residential units within the site and therefore it is probable that the site will acquire some domestic paraphernalia and there will be more intensive parking at the site at different times of the day. The proposal would consequently have some impact on the character of the area.
- 5.2.6 Furthermore, the provision of amenity space would alter the character and appearance of the car parking area and whilst in many respects the provision of a soft landscaped area would be of benefit to the setting of the car parking area, it is noted that to be of sufficient quality to be of any benefit to the occupants of the flats, it would most likely need to be enclosed by an enclosure of greater height and substance than the 0.9 metre tall picket fence that is mentioned on the submitted plans. The provision of taller and more effective boundary treatments within the site would result in a contrived layout within the site and the amount of boundary treatments would be likely to detract from the character of the area.
- 5.2.7 Whilst the arrangement shown on the plans submitted would not be unacceptable in visual terms, and therefore the application should not be refused on those grounds, it is considered that it would not be possible to impose conditions to enable the amenity space to be of adequate standard. This will be discussed further below.

5.3 Impact on Residential Amenity

- 5.3.1 The basis of policy D1 of the approved LDP seeks to ensure that development will protect the amenity of its surrounding areas taking into account privacy, overlooking, outlook, noise, smell, light, visual impact, pollution, daylight and sunlight. This is supported by section c07 of the MDDG (2017).
- 5.3.2 The nearest existing neighbouring dwelling is No 32 Imperial Avenue, which is directly to the east of the site. However, there is an existing 1.8m common boundary fence between No. 32 and the application site and it is noted that there are no additional buildings or extensions proposed under the terms of this application. Although the existing windows might be relied upon more intensively, it is considered that there would not be a significant intensification of the use of the windows that would cause a loss of privacy within neighbouring properties to an extent that would justify the refusal of the application on those grounds.
- 5.3.3 The proposed removal of condition 4 would be likely to intensify the number of people at the site as the level of long-term occupation would be increasing. However, it is considered that the level of noise and disturbance generated through the use of the site would not be materially different. Therefore it is considered that the proposal would not have an impact on the amenities of neighbouring residents that would justify the refusal of the application on those grounds.

5.4 Access, Parking and Highway Safety

- 5.4.1 Policy T2 aims to create and maintain an accessible environment, requiring 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 existing parking spaces would be altered as part of this application. Parking spaces 7 and 9 would be relocated to the western side of the site and spaces 1, 2 and 3 would be located 4m forwards (west) of their existing location. The highway authority has been consulted on the relocation and there is no objection to the scheme on highway safety grounds. The proposal would also provide the maximum of 1 space per one bed residential unit as recommended by the adopted Maldon District Vehicle Parking Standards (MDVPS).

5.5 Private Amenity Space and Landscaping

- 5.5.1 Condition 3 of approved planning application FUL/MAL/11/00247 required *'The communal grassed garden amenity areas as shown upon the approved plan which is attached to and forms part of this permission shall be laid out and available for use as amenity space for the occupants of all the flats...'*. The variation of condition 3 is to revise the plan approved outlining the grassed garden amenity areas, to be replaced with a revised plan providing additional amenity space. This additional space would be located between the parking area for the motel users and the service area of the public house.
- 5.5.2 It is considered that the location and shape of the additional amenity space would result in it being of limited value to the occupants of the residents of the flats. It is considered that the openness relative to the commercial uses at the site and the parking area, means that the amenity space would not be private and would be subjected to overlooking, noise and fumes. Whilst it is noted that the construction of a form of enclosure (particularly one of greater height and density than the picket fence mentioned on the plans) could overcome some of these concerns in part, it is considered that this is unlikely to be visually acceptable and this would enclose the amenity space in a manner that would make it unattractive and of minimal value or benefit to the occupants. It is therefore considered that the amenity space provisions to serve the proposed flats would be unacceptable. Therefore, it is considered the amenity space provided would not be in accordance with policy D1 and D2 of the LDP.

5.6 Living Conditions

- 5.6.1 The NPPF sets out that *"Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions."*
- 5.6.2 Furthermore, the NPPF sets out that *'Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community*

facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity....'

- 5.6.3 Policy D2 aims to minimise all forms of possible pollution including air, land, water, odour, noise and light that would result in a detrimental impact and potential risk to the human and natural environment. Any concerns regarding any risks would need to be addressed by appropriate avoidance, alleviation and mitigation measures.
- 5.6.4 The applicant has stated that *"It has been shown through testing that the acoustic insulation between the flats and the public house is very good.....The testing found that the airborne sound insulation results are on average 9.7dB better than the required standard achieving sound insulation of between 52 and 54dB. That is to say that noise or music within the public house will not have an adverse impact on the living conditions of the occupiers of the flats."* The applicant goes on to state that a sound monitor has been installed within the premises, that there is signage to require patrons to be respectful of their neighbours, that condition 10 of the 2011 permission can control noise from the extraction system at the site and the outlook of the flats is acceptable.
- 5.6.5 In response the Council's Environmental Health Officer has stated the following:

"For this most recent application the applicant has submitted a Pre-Completion Testing Report on Flats formed by a material change of use to show compliance with Part E of the Building Regulations 2000 (as amended) by Sound Acoustics dated 21st November 2018.

Whilst the report indicates compliance from airborne noise testing between the licensed premises and the flats above the pre completion testing to meet the requirements of Approved Document E do not apply to noise from live bands, recorded music and regular raised voices associated with the licensed premises. Part E of the Building Regulations and the associated pre completion testing is aimed at the resistance of sound between dwellings as stated in the LABC Technical Guidance Note regarding the Resistance of Sound (2009).

The resistance of sound between commercial units and dwellings, in particular for this type of noise, requires testing specific to live bands and amplified recorded music. It will also usually require more robust sound insulation than published in Approved Document E to respect the reasonable privacy of occupants of dwellings and so protect their amenity and public health.

Therefore the sound testing provided is inadequate to demonstrate that the occupants of the flats above the licensed premises are protected from noise within it. In addition the concerns about noise disturbance also extend to customers entering and leaving the licensed premises which realistically cannot be controlled.

If the permission was granted although Environmental Health will investigate complaints of nuisance arising from the licensed premises the business will have a defence of best practicable means. This could effectively mean that only a percentage

of noise or other disturbances could be remedied should complaints arise once the development is completed and occupied. Additionally the current character of the area would need to be considered when investigating nuisance and the industrial area would influence this. Similarly the NPPF also suggests that existing businesses should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established.

Therefore the primary legislation available to Environmental Health would be of limited use.

On considering the information available to us and the potential risk to public health from noise from the licenced premises the situation remains unchanged from the previous comments. Therefore Environmental Health objects to the application and any further relaxation of the residential occupancy at the site.”

- 5.6.6 It is therefore noted that the testing methodology that has been utilised is inadequate and the Environmental Health Officers have objected to the application on the grounds that the use of the four existing units for independent residential purposes is inappropriate given the proximity of the existing bar. Occupants are likely to be disturbed by activities commonly associated with a licensed premise including music, vehicle movements and patrons arriving and leaving.
- 5.6.7 In 2014 an application (FUL/MAL/14/00965) for the change of use of the motel units into 3 one bedroom flats was received and refused and a subsequent appeal (APP/X1545/W/15/3038236) was dismissed. Within the appeal decision the Inspector stated ‘..on my site visit, a lorry along with activity in the kitchen and storeroom and the associated noise and disturbance.’ Furthermore, the Inspector concluded ‘proposal would provide unsatisfactory living conditions for future occupiers, with regard to noise, disturbance, outlook and private garden space.’
- 5.6.8 Although the terms of the application are different, it is noted that the outcome would still be to allow the formation of self-contained residential units at the site, which would be occupied independently of the public house. Although the relationship between buildings would be different, the potential noise sources would be comparable and therefore the living conditions of residents could be impacted upon in the same manner as was previously found to be unacceptable at the site by both the Local Planning Authority (LPA) and the Planning Inspectorate. The parking areas to the front and rear of the site and customers entering and leaving the site (who could possibly in ‘high spirits’) has the potential to cause disturbance notwithstanding the presence of signage to request otherwise.
- 5.6.9 The existing units are intended to be occupied by workers. It is therefore considered that the level of accommodation that would be expected to be available and the standard of living conditions would be different to that which would be expected of a residential dwelling. The concerns that were raised previously with respect to the receipt of light and the provision of outlook were primarily aimed at the motel units at the rear of the site. In this instance the applicant has demonstrated that the flats above the public house would be acceptable in this respect through the provision of photographs that show the living conditions and through submitting light calculations. It is therefore considered that no objection should be raised to this proposal in that regard.

- 5.6.10 Additionally, due to the additional amenity area requested under the variation of condition 3 being unacceptable, it is considered that the units would not benefit from acceptable private amenity space and therefore the resultant self-contained units would be in conflict with the amenity space standards that are set out within the Council's Design Guidance Documents. Policy D1 of the approved LDP requires all development to provide sufficient and usable private and public amenity spaces, green infrastructure and public open spaces. In addition, the adopted MDDG SPD advises a suitable garden size for each type of dwellinghouse.
- 5.6.11 It is noted that the Planning Inspector for the previous appeal gave consideration to the use of a condition to control the sub-division of the motel unit's ownership but this was not considered to overcome the concerns that existed. The same is true for this scenario.
- 5.6.12 Overall, the proposed alterations to the conditions would allow residential units to be formed that would be served by a poor and inadequate standard of living contrary to policies D1, D2 and H4 of the LDP.

6. ANY RELEVANT SITE HISTORY

- **FUL/MAL/10/00552** - Single storey rear extension and alterations to public house. Conversion of first floor to motel (5 beds) and 2 no. one bedroom flats. Erection of 2 no. two bedroom flats at rear with associated parking and amenity spaces. – Refused 01.09.2010
- **FUL/MAL/10/00919** - Single storey rear extension and alterations to public house. Conversion of first floor to 4no. one bedroom flats. Single storey block of 5 motel units and laundry room with associated parking and amenity space. – Approved 14.12.2010
- **FUL/MAL/11/00247** - Single storey rear extension and alterations to public house with conversion of first floor to 4 one bedroomed flats. Single storey block of 5 motel units and laundry room with associated parking and amenity space.- Approved 26.05.2011
- **FUL/MAL/14/00965** - Change of use of motel units into 3 one bedroom flats. – Refused 12.12.2014 – Appeal Dismissed 22.10.2015

7. CONSULTATIONS AND REPRESENTATIONS RECEIVED

7.1 Representations received from Parish / Town Councils

Name of Parish / Town Council	Comment	Officer Response
Mayland Parish Council	Recommends Refusal – Condition 3 is regarding a piece of green land at the rear of the motel units which is not even owned by applicant. This formed part of the original footpath along the rear of Hardy's.	The agent was advised of these comments and a revised location plan and block plan was received on the 15/01/2019. A re-consultation was issued allowing 2 weeks for comments.

Name of Parish / Town Council	Comment	Officer Response
	Therefore the original condition should remain in place.	

7.2 Internal Consultees

Name of Internal Consultee	Comment	Officer Response
Environmental Health	Object - On considering the information available to us and the potential risk to public health from noise from the licenced premises the situation remains unchanged from the previous comments. Therefore Environmental Health objects to the application and any further relaxation of the residential occupancy at the site. Furthermore, We do not consider this as much of an amenity due to its location between the car park and service area, for occupants of flats and holiday accommodation as it likely to be affected by noise, fumes and a lack of privacy. Therefore we cannot support the application to vary condition 3.	Addressed within the relevant sections of the report below.

7.3 Representations received from Interested Parties

7.3.1 No letters of representation have been received.

8. REASON FOR REFUSAL

1. The proposed removal of condition 4 would result in residential accommodation being provided that would not be served by adequate living conditions as a result of the relationship of that accommodation with neighbouring uses and the inadequate provision of amenity space. The proposed removal of the condition is therefore unacceptable and contrary to policies D1, D2 and H4 of the Maldon District Local Development Plan and the National Planning Policy Framework.