



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

**To
COUNCIL (EXTRAORDINARY)
21 MARCH 2019**

Application Number	MLA/MAL/19/00101
Location	Land South Of Wycke Hill And Limebrook Way, Maldon, Essex
Proposal	Application for a modification to Section 106 legal agreement executed under planning application OUT/MAL/14/01103 as amended by Deed of Variation (references FUL/MAL/16/01454 and FUL/MAL/17/00396)
Applicant	Taylor Wimpey (East London)
Agent	Ms Catherine Williams – Savills
Target Decision Date	Not applicable
Case Officer	Kathryn Mathews
Parish	MALDON WEST
Reason for Referral to the Committee / Council	Not delegated to Officers

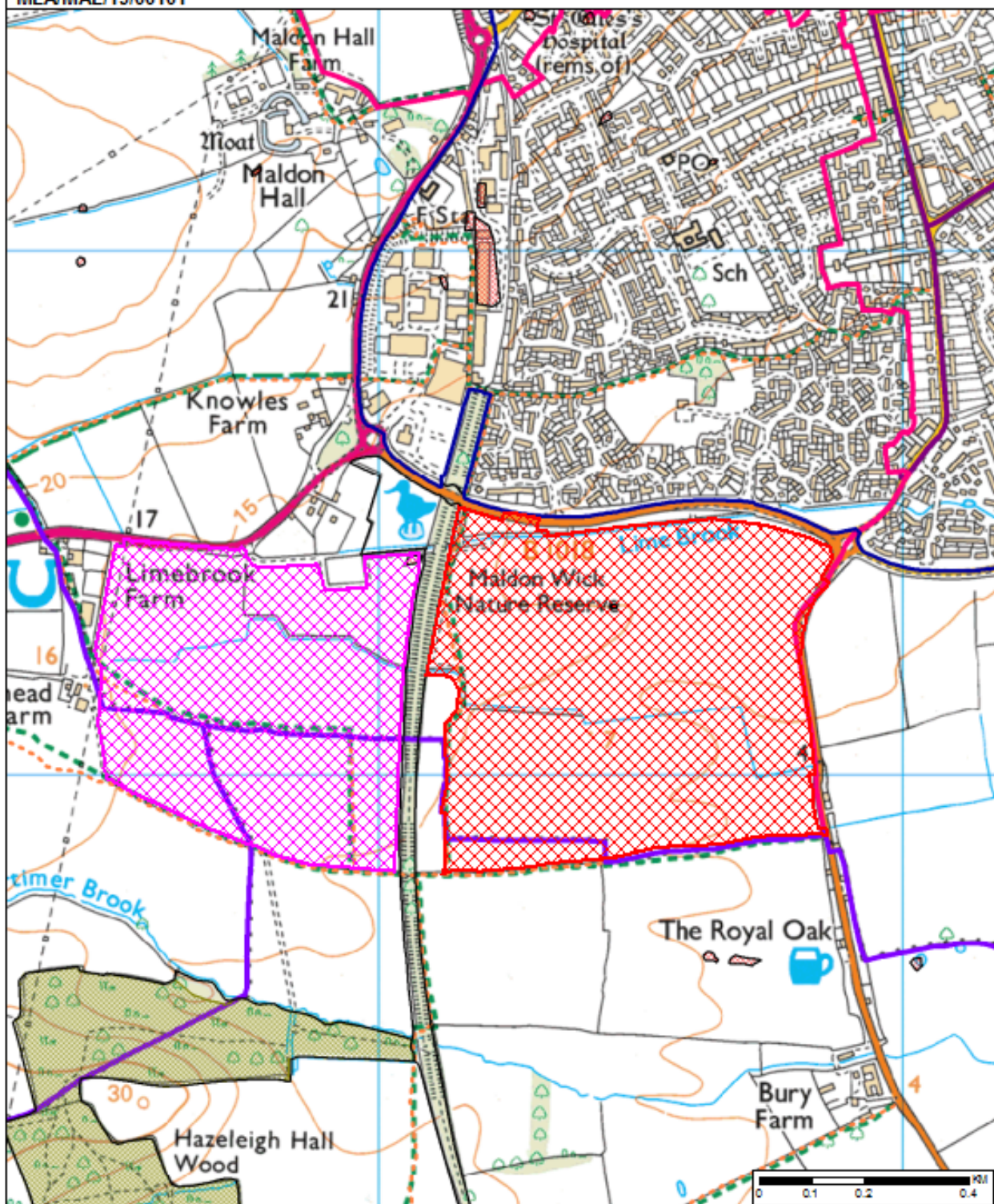
1. RECOMMENDATION


APPROVE the proposed changes to the Section 106 (S106) Agreement as set out in paragraphs 3.1.6 – 3.1.10 of the report.

2. SITE MAP

Please see overleaf.

Land south of Wycke Hill and Limebrook Way, Maldon
MLA/MAL/19/00101



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	Organisation:	Maldon District Council
	Department:	Department
	Comments:	Council (Extraordinary)
	Date:	19/02/2019
	MSA Number:	100018588
www.maldon.gov.uk		

3. SUMMARY

3.1 Proposal / brief overview, including any relevant background information

- 3.1.1 The current application relates to land which forms part of the wider area identified as Strategic Site S2(a) in the Maldon District Approved Local Development Plan (LDP) which gained outline planning permission (reference OUT/MAL/14/01103) in December 2016, following the completion of a Section 106 Agreement, for ‘development of land for up to 1,000 dwellings, an employment area of 3.4 hectares (Use Classes B1, B2 and B8 uses), a local centre (Use Classes A1-A5, B1a, C2, C3, D1 and D2 uses), a primary school, two early years and childcare facilities, general amenity areas and formal open space including allotments, sports playing fields, landscaping, sustainable drainage measures including landscaped storage basins and Sustainable Drainage System (SuDS) features, vehicle accesses onto the existing highway network and associated infrastructure’. The outline planning permission included details of means of access to the site; details of layout, scale, appearance and landscaping were reserved for future determination. The approved means of access to the site consists of two vehicular accesses off Spital Road / A414 on the western side, an access (roundabout) off Limebrook Way / A414 and two accesses off Fambridge Road (B1010) to the eastern side.
- 3.1.2 The site the subject of the abovementioned outline planning permission was subsequently separated into Eastern and Western Parcels. An application for approval of reserved matters of Phase 1 of the eastern parcel (for 200 dwellings) was granted in 2018 (reference RES/MAL/18/00531) and where development is underway. An application for approval of reserved matters of Phase 2 of the eastern parcel (for 406 dwellings) has been submitted (reference RES/MAL/18/01440). Details of the infrastructure (drainage, highways, site levels and associated works) for the whole of the Eastern Parcel have also been approved (reference FUL/MAL/18/00494).
- 3.1.3 The current application seeks a modification to the Section 106 Agreement attached to planning permission reference OUT/MAL/14/01103 dated 1 December 2016 (as amended by Deed of Variation dated 26 February 2018 (references FUL/MAL/16/01454 and FUL/MAL/17/00396).
- 3.1.4 The Section 106 Agreement associated with the outline planning permission (reference OUT/MAL/14/01103) secured the following:
- Highway and public transport obligations;
 - Affordable Housing (30%);
 - Education (provision of land for and a financial contribution to Essex County Council);
 - Healthcare financial contribution;
 - Provision of an allotment site;
 - Financial contribution for youth facilities;
 - A local management organization to manage and administer the green infrastructure provided;
 - Children’s play areas.

- 3.1.5 The Deed of Variation completed in February 2018 (which facilitated the splitting of the site into two parcels - Eastern and Western) did not vary any of the requirements of the original S106.
- 3.1.6 The current application seeks an amendment to the definition of the Local Management Organisation (LMO) and the Youth Facilities Contribution. A draft Deed of Variation has been submitted with the current application.
- 3.1.7 The current definition of 'Local Management Organisation' is *'an incorporated or unincorporated body appointed pursuant to Schedule 8 of the Deed'*. The proposed definition is *'a community interest company or another incorporated or unincorporated body appointed pursuant to Schedule 8 of this Deed'*. Schedule 8 deals with the appointment of a Local Management Organisation (LMO) to manage and administer the proposed Green Infrastructure (open space, playing fields, sports pitches and associated facilities, play areas, allotments, existing vegetation, ecological mitigation, new structural landscaping and SuDS).
- 3.1.8 The applicant explains that it was originally envisaged that the LMO would take the form of a charitable organisation similar to the Land Trust but, to ensure the long term future of the management company, it is requested that 'charitable organisation' is replaced with 'Community Interest Company' which will ensure that there remains the opportunity for residents, Councillors and stakeholders to be represented on the board of the management company but will also ensure that the management company can be operated by a commercial entity which will secure the long term future of all maintenance aspects. In addition, it is requested that provision is made for a separate LMO for the East and West Green Infrastructure and separate LMO (or multiple) for the sports facilities, allotment site and tunnel (which would connect the Eastern and Western Parcels).
- 3.1.9 The current definition of the 'Youth Facilities Contribution' is *'the contribution to be paid to the District Council for the Purposes and specifically towards the provision of Youth Facilities, such contribution to be 72.7% of the cost of the Purposes such contribution to be no more than ... £541,667. Indexed'*. Youth Facilities are defined within the existing S106 as *'youth facilities, which can include skateboarding park and teen shelters, to be provided within and/or in the vicinity of the Development'*. 'Purposes' are defined within the existing S106 as *'the use to which each of the Contributions specified in this Deed is put in compliance with this Deed the requirements of the CIL Regulations and the Planning Permission'*. Schedule 7 of the Agreement deals with Youth Facilities and requires the payment of 50% of the Youth Facilities Contribution prior to the first Occupation of a Residential Unit and 50% prior to the first Occupation of the 250th Residential Unit.
- 3.1.10 With respect to the Youth Facilities, the applicant proposes that some elements are constructed by them rather than just a financial contribution being made. It is proposed that the applicant constructs a Multi-use Games Area (MUGA) and a sports hall/community space and kitchen (the latter to be attached to the changing room building to be constructed adjacent to the sports pitches). As a result, the proposed amended definition of the reduced 'Youth Facilities Contribution' is *'the contribution in the sum of £173,894.00 to be paid to the District Council for the Purposes and specifically towards the provision of Youth Facilities'*.

- 3.1.11 Details of the sports hall/community space and MUGA have been submitted and also form part of reserved matters application reference RES/MAL/18/01440. Costings for these two elements have also been provided. The applicant proposes that the Deed of Variation requires the pavilion extension to be completed prior to the occupation of 300 of the dwellings forming part of the Eastern parcel and the MUGA works to be carried-out prior to the completion of the phase on which the MUGA is to be constructed (which is Phase 2, the subject of current application reference RES/MAL/18/01440).

3.2 Conclusion

- 3.2.1 The proposed Deed of Variation would widen the definition of the 'Local Management Organisation', allow for a separate LMO for the East and West Green Infrastructure and allow for a separate LMO (or multiple) for the sports facilities, allotment site and tunnel. The proposed Deed would also introduce a requirement for a MUGA and sports hall / community space to be provided by the developer, with an associated reduction in the 'Youth Facilities Contribution'.
- 3.2.2 No objection is raised, in principle, to the proposed variation of the Section 106 Agreement, subject to agreement to the detailed wording of the Deed of Variation.
- 3.2.3 Based on the above, it is recommended that the application is approved.

4. MAIN RELEVANT POLICIES

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

4.1 National Planning Policy Framework 2019 including paragraphs:

- 54 - 57 Planning Conditions and Obligations

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

- Policy S1 - Sustainable Development
- Policy S2 – Strategic Growth
- Policy S3 – Place Shaping
- Policy S4 – Maldon and Heybridge Strategic Growth
- Policy D2 - Climate Change & Environmental Impact of New Development
- Policy N1 - Green Infrastructure Network
- Policy N3 - Open Space, Sports and Leisure
- Policy I1 – Infrastructure and Services

4.3 Relevant Planning Guidance / Documents:

- National Planning Policy Framework (NPPF)
- National Planning Policy Guidance (NPPG)
- South Maldon Garden Suburb Strategic Masterplan Framework Supplementary Planning Document (SPD) (March 2018)

- South Maldon Suburb Strategic Design Code (March 2016)

5. **MAIN CONSIDERATIONS**

- 5.1 As set out in paragraph 56 of the NPPF, planning obligations must only be sought where they meet all of the following tests (as set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010): a) necessary to make the development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development.
- 5.2 Where an application is made to an authority for the modification or discharge of planning obligations, the authority may determine a) that the planning obligation shall continue to have effect without modification; (b) if the obligation no longer serves a useful purpose, that it shall be discharged; or (c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.
- 5.3 In the assessment of an application to vary a Section 106 Agreement, regard needs to be had to the judgement of R (The Garden and Leisure Group Ltd) v North Somerset Council [2003] EWHC 1605 (Admin) where it was concluded that *“there are four essential questions to be considered: what is the current obligation? what purpose does it fulfil? is it a useful purpose? and if so, would the obligation serve that purpose equally well if it had effect subject to the proposed modifications?”*.
- 5.4 It is considered that the existing obligations the subject of this application serve a useful purpose as they would ensure the appropriate management of the Green Infrastructure which forms part of this strategic development site and an adequate level of provision of youth facilities as part of the development. However, it is also considered that the relevant obligations would serve that purpose equally well if they had effect subject to the proposed modifications.
- 5.5 Sports England have raised no objection to the proposed changes. They have advised that the proposed changes to the definition of the Local Management Organisation would have the benefit that the Community Interest Company can be operated as a commercial entity while maintaining representation on the Board by elected members and other local stakeholders. The management of the proposed sports facilities on the site as a Community Interest Company would offer more flexibility than a charity to generate revenue to support the long-term maintenance of the proposed sports facilities. Sports England go on to advise that many community sports facilities are successfully managed by Community Interest Companies which is considered to be an appropriate form of management in the context of the challenges that sports facilities and other community facilities face in terms of sustaining their operation over a long-term period. Sports England also advise that the amendment to allow a separate LMO for the sports facilities is also welcomed as this would allow the flexibility for a LMO with a specialism in managing such facilities to be put in place which may be preferential from an operational perspective than requiring a single LMO to be set up to manage all of the community facilities that may not have the experience in managing sports facilities.

- 5.6 With respect to the proposed change to the 'Youth Facilities' contribution, Sports England raise no objection to the 'Youth Facilities' contribution being reduced to take account of the additional investment proposed into the pavilion subject to the revised agreement making provision for the additional facilities to be delivered within an acceptable timescale. It is considered that completion of the pavilion extension prior to the occupation of 300 of the dwellings forming part of the Eastern parcel (which would be just under half of the number of dwellings forming part of the Eastern parcel) would be reasonable.

6. **ANY RELEVANT SITE HISTORY**

- **SCR/MAL/13/01169**– Request for a Screening Opinion for Development south of Limebrook Way, Maldon – Required.
- **OUT/MAL/14/01103** - Outline application for up to 1000 dwellings, an employment area of 3.4 hectares (Use Classes B1, B2 and B8 uses), a local centre (Use Classes A1-A5, B1a, C2, C3, D1 and D2 uses), a primary school, two early years and childcare facilities, general amenity areas and formal open space including allotments, sports playing fields, landscaping, sustainable drainage measures including landscaped storage basins and SuDs features, vehicle accesses onto the existing highway network and associated infrastructure – Approved, following completion of a Section 106 Agreement, 01.12.2016.
- **FUL/MAL/16/01454** - Variation of conditions 5, 13 & 14 on approved planning permission OUT/MAL/14/01103 (Outline application for up to 1000 dwellings, an employment area of 3.4 hectares (Use Classes B1, B2 and B8 uses), a local centre (Use Classes A1-A5, B1a, C2, C3, D1 and D2 uses), a primary school, two early years and childcare facilities, general amenity areas and formal open space including allotments, sports playing fields, landscaping, sustainable drainage measures including landscaped storage basins and SuDs features, vehicle accesses onto the existing highway network and associated infrastructure.) – Approved 16.02.2017 - Deed of variation subsequently completed 26.02.2018.
- **FUL/MAL/16/01458** - Variation of condition 11 and removal of condition 12 on planning permission OUT/MAL/14/01103 (Outline application for up to 1000 dwellings, an employment area of 3.4 hectares (Use Classes B1, B2 and B8 uses), a local centre (Use Classes A1-A5, B1a, C2, C3, D1 and D2 uses), a primary school, two early years and childcare facilities, general amenity areas and formal open space including allotments, sports playing fields, landscaping, sustainable drainage measures including landscaped storage basins and SuDs features, vehicle accesses onto the existing highway network and associated infrastructure.) – Approved 16.02.2017.
- **NMA/MAL/17/00367** - Application for non-material amendment following grant of Planning Permission of OUT/MAL/14/0110 as amended by permissions FUL/MAL/16/01454 & FUL/MAL/16/01458 (Outline application for up to 1000 dwellings, an employment area of 3.4 hectares (Use Classes B1, B2 and B8 uses), a local centre (Use Classes A1-A5, B1a, C2, C3, D1 and D2 uses), a primary school, two early years and childcare facilities, general amenity areas and formal open space including allotments, sports playing fields, landscaping, sustainable drainage measures including landscaped

storage basins and SuDs features, vehicle accesses onto the existing highway network and associated infrastructure) Amendment sought: Amendment to conditions 5 & 6 – Approved 26.04.2017.

- **FUL/MAL/17/00396** - Variation of condition 27 on approved application OUT/MAL/14/01103 (Outline application for up to 1000 dwellings, an employment area of 3.4 hectares (Use Classes B1, B2 and B8 uses), a local centre (Use Classes A1-A5, B1a, C2, C3, D1 and D2 uses), a primary school, two early years and childcare facilities, general amenity areas and formal open space including allotments, sports playing fields, landscaping, sustainable drainage measures including landscaped storage basins and SuDs features, vehicle accesses onto the existing highway network and associated infrastructure.) – Approved 24.07.2017 - Deed of variation subsequently completed 26.02.2018.
- **FUL/MAL/18/00070** - Variation of condition 7 on approved application FUL/MAL/17/00396 (Outline application for up to 1000 dwellings, an employment area of 3.4 hectares (Use Classes B1, B2 and B8 uses), a local centre (Use Classes A1-A5, B1a, C2, C3, D1 and D2 uses), a primary school, two early years and childcare facilities, general amenity areas and formal open space including allotments, sports playing fields, landscaping, sustainable drainage measures including landscaped storage basins and SuDs features, vehicle accesses onto the existing highway network and associated infrastructure.) – Approved 13.04.2018.
- **FUL/MAL/18/00071** - Variation of conditions 5,13,21,25,43,53,55,61, 63,67,68,69,74,81,84 on approved application OUT/MAL/14/01103 (Outline application for up to 1000 dwellings, an employment area of 3.4 hectares (Use Classes B1, B2 and B8 uses), a local centre (Use Classes A1-A5, B1a, C2, C3, D1 and D2 uses), a primary school, two early years and childcare facilities, general amenity areas and formal open space including allotments, sports playing fields, landscaping, sustainable drainage measures including landscaped storage basins and SuDs features, vehicle accesses onto the existing highway network and associated infrastructure.) – Approved 13.04.2018.
- **FUL/MAL/18/00494** - Application for infrastructure works, including; foul and surface water drainage, provision of highways, proposed site levels and associated works. Approved 17.08.2018.
- **RES/MAL/18/00531** - Approval of reserved matters (layout, scale, appearance and landscaping) for Phase 1 of the Eastern Parcel of the wider Land South of Wycke Hill and Limebrook Way site (LPA Application Ref. FUL/MAL/18/00071), comprising the construction of 200 residential dwellings (Use Class C3) and associated works. Approved 11.09.2018.
- **PROW/MAL/18/00831** - Diversion of a public footpath 8 PROW 253 Undetermined.
- **ADV/MAL/18/01066** -Moveable advertisements attached to hoardings, no more than 100m in length in total, to promote the District of Maldon and the South Maldon Garden Suburb. Approved 16.11.2018.

- **ADV/MAL/18/01176**– 10 sign panels measuring 3,050mm by 1,500mm and one sign panel measuring 57,339mm by 2,140mm. 9no. flags 1,000mm by 2,000mm attached atop 6,000mm poles. Approved 15.11.2018.
- **SCR/MAL/18/01396** - Request for Environmental Impact Assessment Screening Opinion for a proposed development of up to 40 additional residential units. Not required.
- **FUL/MAL/18/01439** - Redevelopment to provide 33 residential units (Class C3) together with associated infrastructure. Refused 12.03.2019.
- **RES/MAL/18/01440** - Approval of reserved matters (layout, scale, appearance and landscaping) for Phase 2 of the Eastern Parcel of the wider Land South of Wycke Hill and Limebrook Way site (LPA Application Ref. FUL/MAL/18/00071), comprising the construction of 200 residential dwellings (Use Class C3) and associated work. Undetermined.
- **DET/MAL/18/05066** - Compliance of conditions notification of approved application FUL/MAL/18/00071 (Variation of conditions 5,13,21,25,43,53,55,61,63,67,68,69,74,81,84 on approved application OUT/MAL/14/01103) Condition 7 - Strategic phasing plan. Approved 08.06.2018.
- **DET/MAL/18/05078** - Compliance with conditions notification FUL/MAL/18/00071 (Variation of conditions 5,13,21,25,43,53,55,61, 63,67,68,69,74,81,84 on approved application OUT/MAL/14/01103 (Outline application for up to 1000 dwellings, an employment area of 3.4 hectares (Use Classes B1, B2 and B8 uses), a local centre (Use Classes A1-A5, B1a, C2, C3, D1 and D2 uses), a primary school, two early years and childcare facilities, general amenity areas and formal open space including allotments, sports playing fields, landscaping, sustainable drainage measures including landscaped storage basins and SuDs features, vehicle accesses onto the existing highway network and associated infrastructure.) Condition 45 - Trees & hedgerows. Condition 47 - Position & proposed depth of excavation trenches for all services. Condition 54 - Allotments plan. Condition 61 - Management & maintenance of all watercourses. Condition 64 - Foul water drainage. Condition 67 - Submission of archaeological assessment. Condition 68 - Secured implementation of archaeological assessment. Condition 74 - Contaminated land assessment. Condition 81 - Construction Environmental Management Plan (CEMP). Condition 84 - Superfast broadband. Approved 05.10.2018.
- **DET/MAL/18/05193** - Compliance of conditions notification of approved application FUL/MAL/18/00071 (Variation of conditions 5,13,21,25,43,53,55,61,63,67,68,69,74,81,84 on approved application OUT/MAL/14/01103 (Outline application for up to 1000 dwellings, an employment area of 3.4 hectares (Use Classes B1, B2 and B8 uses), a local centre (Use Classes A1-A5, B1a, C2, C3, D1 and D2 uses), a primary school, two early years and childcare facilities, general amenity areas and formal open space including allotments, sports playing fields, landscaping, sustainable drainage measures including landscaped storage basins and SuDs features, vehicle accesses onto the existing highway network and associated infrastructure.) Condition 7 - Strategic phasing plan. Approved 09.01.2019.

- **DET/MAL/19/05007** - Compliance with conditions notification of approved application FUL/MAL/18/00071 (Variation of conditions 5,13,21,25,43,53,55,61,63,67,68,69,74,81,84 on approved application OUT/MAL/14/01103 (Outline application for up to 1000 dwellings, an employment area of 3.4 hectares (Use Classes B1, B2 and B8 uses), a local centre (Use Classes A1-A5, B1a, C2, C3, D1 and D2 uses), a primary school, two early years and childcare facilities, general amenity areas and formal open space including allotments, sports playing fields, landscaping, sustainable drainage measures including landscaped storage basins and SuDs features, vehicle accesses onto the existing highway network and associated infrastructure.)). Condition 56 – Materials (Phase 1) Undetermined.
- **DET/MAL/19/05020** - Compliance with conditions notification of approved application FUL/MAL/18/00071 (Variation of conditions 5,13,21,25,43,53,55,61,63,67,68,69,74,81,84 on approved application OUT/MAL/14/01103 (Outline application for up to 1000 dwellings, an employment area of 3.4 hectares (Use Classes B1, B2 and B8 uses), a local centre (Use Classes A1-A5, B1a, C2, C3, D1 and D2 uses), a primary school, two early years and childcare facilities, general amenity areas and formal open space including allotments, sports playing fields, landscaping, sustainable drainage measures including landscaped storage basins and SuDs features, vehicle accesses onto the existing highway network and associated infrastructure.)) Conditions 45 - Trees & Hedges. Condition 47 - Trenches. Condition 50 - Assessment of ground conditions. Condition 73 - Noise impact assessment. Condition 76 - Validation report. Condition 81 - Construction environmental management plan. Undetermined.

7. **CONSULTATIONS AND REPRESENTATIONS RECEIVED**

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

Name of Parish / Town Council	Comment	Officer Response
Maldon Town Council	Recommends approval to the setting-up of a Management Company but recommends refusal to the diversion of part of 'sports facility' contribution to facilities located elsewhere than this development	Recommendation regarding Management Company noted. The current proposal is not to divert any of the 'sports facility' contribution elsewhere but for the developer to provide youth facilities on site (a MUGA and sports hall/community space) instead of making the full financial contribution secured as part of the outline planning permission (OUT/MAL/14/01103)
Woodham Mortimer with Hazeleigh	No response received	

7.2 Statutory Consultees and Other Organisations (*summarised*)

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
Essex County Council (ECC) SUDS team	No comments made as the application does not relate to surface water drainage.	Noted.
Essex County Highways	No response received.	However, none of the changes proposed to the Section 106 Agreement relate to highway matters.
Sport England	No objections.	Noted – refer to paragraphs 5.5 and 5.6 of report

7.3 Internal Consultees (*summarised*)

Name of Internal Consultee	Comment	Officer Response
Countryside and Coast Manager	No objection.	Noted

7.4 Representations received from Interested Parties (*summarised*)

7.4.1 No letters were received.