



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

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to  
**SOUTH EASTERN AREA PLANNING COMMITTEE  
7 OCTOBER 2019**

<b>Application Number</b>	<b>FUL/MAL/19/00834</b>
<b>Location</b>	The Ship Inn, 52 High Street, Burnham-On-Crouch
<b>Proposal</b>	Section 73A application for the Installation of a replacement extractor fan, and the installation of a sky dish at the rear of the property.
<b>Applicant</b>	Justin Cracknell
<b>Target Decision Date</b>	10.10.2019
<b>Case Officer</b>	Nicola Ward
<b>Parish</b>	<b>BURNHAM SOUTH</b>
<b>Reason for Referral to the Committee / Council</b>	Member Call In – Councillor W Stamp – Public interest as restrictions on ventilation causing harm to business and could be a safety issue.

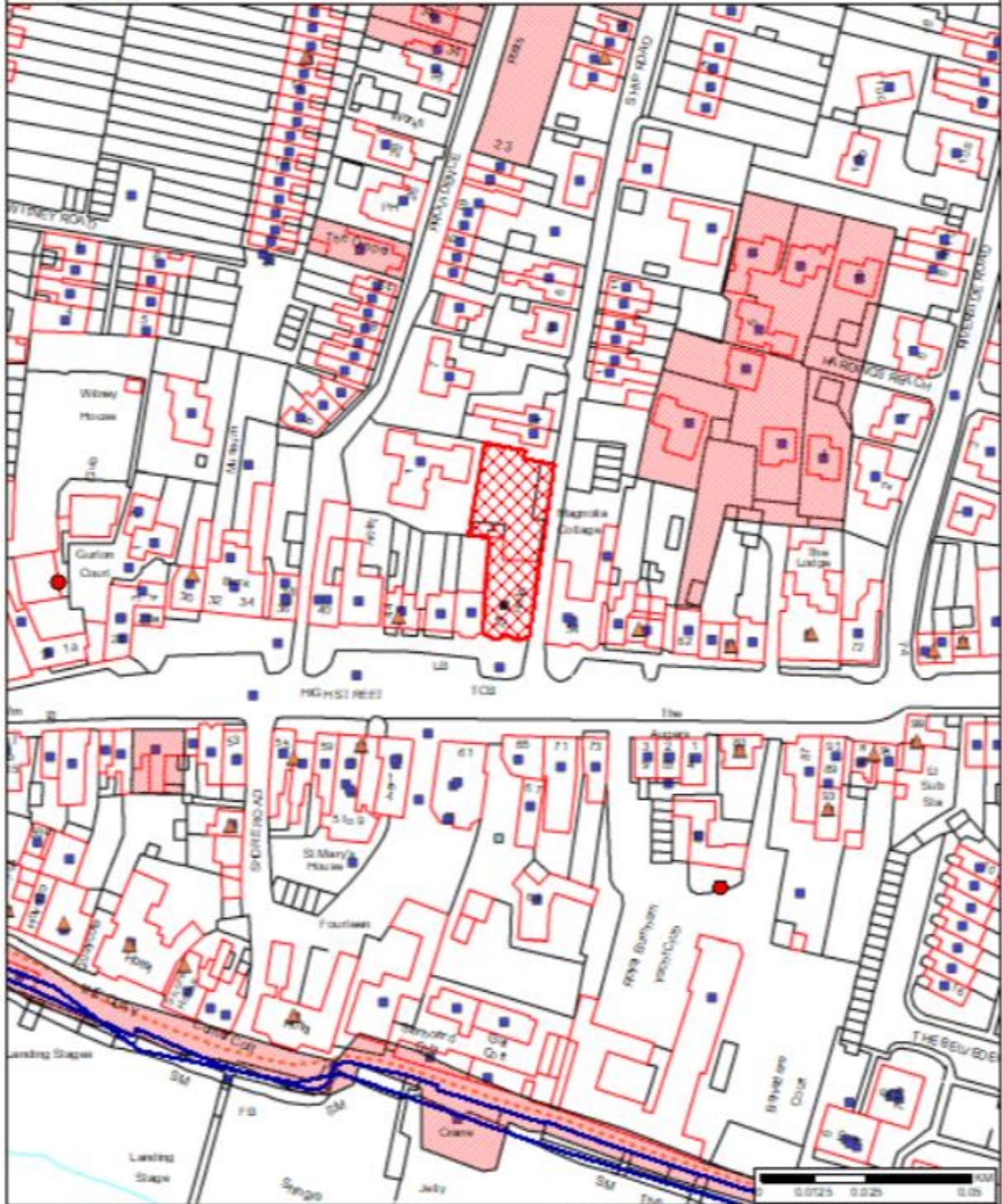
1. **RECOMMENDATION**


**APPROVE** subject to the relevant condition in Section 8.

2. **SITE MAP**

Please see overleaf.

**The Ship Inn, High Street**  
**19/00834/FUL**



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	Organisation:	Maldon District Council
	Department:	Department
	Comments:	
	Date:	09/09/2019
	MSA Number:	100018588

### 3. **SUMMARY**

#### **3.1 Proposal / brief overview, including any relevant background information**

3.1.1 The application seeks planning permission (under the terms of Section 73A of the Town and Country Planning Act 1990) for the erection of a satellite dish located on the side elevation of the building and an extractor fan located to the rear elevation. The satellite dish and extractor fan have been installed therefore, the application is retrospective in nature.

3.1.2 The application is a resubmission of approved application FUL/MAL/18/01141 and proposes no alterations to the previous application. Planning application FUL/MAL/18/01141 was granted subject to a number of conditions.

#### **3.2 Conclusion**

3.2.1 It is considered that in terms of the scale and appearance of the development has not resulted in any demonstrable harm to the character and appearance of the Conservation Area. The harm caused by the noise and disturbance can be mitigated by the imposing of conditions. It is therefore considered that the development is in accordance with policies D1, D3 and H4 of the LDP and the guidance contained in the National Planning Policy Framework.

### 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:**

- 11 Presumption in favour of sustainable development
- 38 Decision-making
- 47-50 Determining applications
- 124 – 132 Achieving well-designed places

#### **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
- 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)
- Essex Design Guide
- Car Parking Standards

### **5. MAIN CONSIDERATIONS**

#### **5.1 Principle of Development**

- 5.1.1 The principle of providing facilities in association with the commercial premises is considered acceptable in line with policies D1, D3 and H4 of the approved LDP.

#### **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”.*

- 5.2.3 The basis of policy D1 of the approved LDP seeks to ensure that all development will contribute positively towards the public realm and public spaces around development and contribute to and enhance local distinctiveness.

- 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 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 LDP states that development proposals that affect a heritage asset must preserve or enhance its special character, appearance, setting- including its streetscape and landscape value.

- 5.2.6 The current application hosts no alterations in terms of the development, to the previously approved application reference: FUL/MAL/18/01141, therefore, the assessment findings remain the same.

- 5.2.7 The satellite dish due to its size would not alter the shape of the host building but the location of the dish, to the side elevation of the host building, would be slightly visible within the streetscene on the High Street and Ship Road. However, because it

would be well above eye level and be a relatively small addition to the building, it is not considered to result in such demonstrable harm to the character and appearance of the Conservation Area to warrant refusal. Furthermore, historic photographs indicate that a satellite dish has been located within the same position since 2009 which would therefore indicate that the satellite dish could be immune from enforcement action.

- 5.2.8 It is considered that the extractor fan is a typical feature commonly associated with public houses that serve food. Whilst the unit is not considered to be of any architectural merit, it is located to the rear of the public house with little to no views from the public domain. Therefore, on balance, it is considered that in terms of the extractor fan appearance and impact, it is considered to result in no detrimental harm to the character and appearance of the conservation area.
- 5.2.9 In addition, the Conservation Area Officer has raised no objection to the development.
- 5.2.10 Overall, it is considered that the development, by means of its scale and style is acceptable in its setting and does not detract from the appearance of the locality, nor the character and appearance of the Conservation Area. Therefore, the development is considered to comply with the stipulations of policy D1, D3 and H4 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. This is supported by section C07 of the MDDG (2017).
- 5.3.2 Concerns have been raised regarding the impact on the amenity and living conditions of adjoining residents. At the time of the last application it was considered that the harm could be mitigated through the imposition of conditions on the granting of any planning permission. This was primarily in relation to the operating hours and limiting the speed of the fan.
- 5.3.3 Condition 1 of permission FUL/MAL/18/01141 stated:

*'The extraction system hereby approved shall only be operated during the following times:*

*Monday to Saturday (inclusive) – 10:00 until 22:00*

*Sunday – 10:00 until 21:00 hours.'*

- 5.3.4 Condition 2 of permission FUL/MAL/18/01141 stated:

*'The LA<sub>eq,5 minute</sub> arising from use of the extraction system hereby approved shall not exceed 55dB(A) at any time when measured at a height of 3.5 metres and a distance of 2m from the plant.'*

- 5.3.5 Whilst this has not formally been submitted as part of the application the Applicant has raised the current proposal is seeking to remove these conditions and to allow a more generous planning application.
- 5.3.6 It is reasonable for occupiers of adjoining residential properties to expect a level of amenity that allows them to enjoy their properties. At quiet times such as early

mornings, weekends and night times due to the lack of background noise, noise generated from the extractor fan can be much more of a disturbance. However, it is an accepted point of planning law that when a condition can be imposed to overcome the harm then this is the correct approach to be undertaken. The report from the Applicant has confirmed that when the fan runs at the limit imposed by the current condition, 55 d(A), there would be a 0dB difference between noise level of the plant and the background. However, if the fan was allowed to be used unrestricted, at full speed, it would exceed the background level by 15 dB(A) which would have a significantly adverse affect on the amenity of the neighbouring occupiers. It is also important to note that the submission also acknowledges there are ways of mitigating the harm.

- 5.3.7 After additional correspondence, during the application process, from the Applicant raising concern with the conditions already imposed the Council's Environmental Health team was consulted again and stated:

*“The reason for the condition applying some level of restriction on hours of operation of the extraction fan previously was for a number of reasons:*

- 1. The applicant's own acoustic report demonstrated that a significant impact existed for local residents if the fan was operated at higher speeds.*
- 2. The applicant did not/could not seemingly install a silencer so noise levels were not demonstrated to be acceptable other than through restricting fan operating speeds.*
- 3. The applicant did not/could not physically restrict fan operating speeds on safety grounds through the implementation of a fan speed restrictor.*
- 4. This Department had identified from local resident complaint that the fan was capable of causing a statutory nuisance and no changes other than “management control” through staff training and a promise to operate the fan at lower speeds was proposed at the time of application because of the aforementioned apparent inability to impose a technical/physical control.*
- 5. Without the reassurance of an engineered noise control, in order to protect the amenity of local residents conditions (2 of them) were requested to any permission granted. The one restricting hours was modified slightly I understand by Planning in order to better reflect the concerns of the applicant at the time.*

*The noise level restriction applied to the permission is an attempt to help provide some reassurance and a quantifiable “level” to help ensure that noise levels are not excessive from the use of the extraction in the absence of a speed limiter or silencer – both of the latter would have been my preference. However, the level contained in the condition is not likely to lead to “inaudibility” at the gardens of local residents and that will likely impact upon the amenity of those residents during the operating hours of the fan, but more so particular at quieter times such as early evening when during warmer weather a resident would reasonably expect to have a good standard of amenity and enjoyment of their garden. The provision of the “hours restriction” condition on top of a more fixed noise level was designed to give respite and guaranteed amenity time for local residents rather than simply suggesting that some level of noise from the fan should be acceptable whenever the pub sought to use it.*

*Given the generous hours of operation already afforded in the permission and the lack of extra reassurances/technical information provided by the applicant at this re-*

*application I have no grounds to suggest anything different to that made at the previous application.*

*I reiterate that the test of impact upon amenity for Planning purposes is a lower threshold than for determination of a statutory nuisance. Consequently, the planning system and any decisions made should not rely upon subsequent “noise complaints” and the statutory nuisance regime to remedy problems that may occur after grant of a permission.”*

- 5.3.8 The Council is required to take a pragmatic approach to the determination of planning applications and there is a need to balance both the needs of a business against the reasonable expectations of a resident to enjoy their dwelling; this is often a difficult task to achieve. Notwithstanding this, the Council is keen to take proactive measures to ensure that commercial activity is able to take place effectively and unrestricted within the District. The Applicant has stated that the current two conditions imposed are too onerous and would have a detrimental impact on the long-term viability and vitality of the business. The Council acknowledges that any restriction can be problematic, but this needs to be weighed against the Applicant’s own submission that acknowledges that an unrestricted use will have an unacceptable impact on the amenity of the adjoining residents, the fact that there are other forms of mitigation available and also the material consideration that is the extant permission.
- 5.3.9 With this in mind, it is considered reasonable to consider other ways of mitigating the harm, rather than through restricting the operation, both in terms of speed and hours, of the plant equipment. With this in mind it is considered that a condition could be imposed that would ensure that the harm to the neighbouring properties is mitigated through technical methods. This would allow the Applicant to either implement this permission and mitigate the harm of the unrestricted use or to implement the previous permission but with the restrictions imposed.

#### **5.4 Access, Parking and Highway Safety**

- 5.4.1 Policy T2 aims to create and maintain an accessible environment, requiring development proposals, inter alia, to provide 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 minimum standards. This takes into account Government guidance which recognises that car usage will not be reduced by arbitrarily restricting off street parking spaces. Therefore, whilst the Council maintains an emphasis of promoting sustainable modes of transport and widening the choice, it is recognised that the Maldon District is predominantly rural in nature and there is a higher than average car ownership. Therefore, the minimum parking standards seek to reduce the negative impact unplanned on-street parking can have on the townscape and safety, and take into account the availability of public transport and residents’ reliance on the car for accessing, employment, everyday services and leisure. The key objectives of the standards is to help create functional developments, whilst maximising



opportunities for use of sustainable modes of transport. This will enable people to sustainably and easily carry out their daily travel requirements without an unacceptable detrimental impact on the local road network, or the visual appearance of the development, from excessive and inconsiderate on street parking.

- 5.4.3 The proposed development has not altered the current parking provision on site or the number of bedrooms at the application site. Therefore, there are no concerns in relation to parking.

6. **ANY RELEVANT SITE HISTORY**

<b>Application Number</b>	<b>Description</b>	<b>Decision</b>
<b>FUL/MAL/96/00502</b>	Refurbishment alterations and extension to existing public house/hotel and demolition of dilapidated outbuildings	Approved
<b>CON/MAL/96/00503</b>	Refurbishment alterations and extension to existing public house/hotel and demolition of dilapidated outbuildings	Approved
<b>FUL/MAL/18/01141</b>	Installation of a replacement extractor fan to existing commercial kitchen and instillation of satellite dish at the rear of the property	Approved

7. **CONSULTATIONS AND REPRESENTATIONS RECEIVED**

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

<b>Name of Parish / Town Council</b>	<b>Comment</b>	<b>Officer Response</b>
Burnham Town Council	No Comment received at the time of writing the report.	Comments noted

7.2 **Representations received from internal consultation**

<b>Name of internal Consultee</b>	<b>Comment</b>	<b>Officer Response</b>
Conservation Officer	No Objection	Comments noted
Environmental Health Officer	This is a resubmission of an application for which planning permission was granted previously (FUL/MAL/18/01141) with appropriate conditions applied to it. It appears that this application differs only in that the local MP has suggested re-submission to request removal of the time restriction on extraction fan operation. There is nothing in this	Comments noted



Name of internal Consultee	Comment	Officer Response
	<p>submission for consideration which suggests why the conditions previously applied should be removed, or are unduly restrictive, and consequently I do not consider that there is reason to suggest deviation from the conditions previously applied.</p>	

### 7.3 Representations received from Interested Parties

7.3.1 No letters of representations have been received.

### 8. PROPOSED CONDITION

1. The extraction system hereby permitted shall be removed and all materials shall be removed within 3 months of the date of this decision if the noise level (rating level LAeq) arising from the extraction system, when assessed from any noise sensitive dwelling, is not at least 5 dB(A) below background (LA90) at all times. The method of assessment will be in accordance with BS4142 methodology. The equipment shall be maintained in good working order and shall at no time in the future shall the noise level (rating level LAeq) arising from the extraction system, when assessed from any noise sensitive dwelling, exceed 5 dB(A) below background (LA90)”  
REASON To protect the amenities of neighbouring residents in accordance with policies D1 and D2 of the Maldon District Local Development Plan.